UNITED NATIONS

CERD

International Convention on the Elimination of all Forms of Racial Discrimination

Distr.
GENERAL

CERD/C/335/Add.2
14 December 1999

Original : ENGLISH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION

# Twelfth periodic reports of States parties due in 1998

## Addendum

## Australia*

[20 July 1999]

---

* This document contains the tenth, eleventh and twelfth periodic reports, due on 30 October 1994, 1996 and 1998, respectively, submitted in one document. For the ninth periodic report of Australia and the summary records of the meetings at which the Committee considered that report, see documents CERD/C/223/Add.1 and CERD/C/SR.1058-1059.

The information submitted by Australia in accordance with the consolidated guidelines for the initial part of the report of States parties is contained in HRI/CORE/1/Add.44.

GE.99-46303 (EXT)

CONTENTS


| | Paragraphs | Page |
|---|---|---|
| Introduction | 1 - 6 | 3 |
| Australian population overview | 7 - 8 | 3 |
| Conclusion | 9 | 4 |
| Article 2 | 10 - 404 | 5 |
| 2.1. Major federal measures | 10 - 50 | 5 |
| 2.2. The process of reconciliation | 51 - 59 | 12 |
| 2.3. Indigenous Australians | 60 - 118 | 15 |
| 2.4. Migrant Australians | 119 - 284 | 25 |
| 2.5. Land rights | 285 - 300 | 54 |
| 2.6. Native title | 301 - 321 | 57 |
| 2.7. Social, economic and cultural measures for Indigenous Australians | 322 - 386 | 61 |
| 2.8. Social, economic and cultural measures for migrant Australians | 387 - 404 | 73 |
| Article 3 | 405 - 408 | 75 |
| 3.1. Condemnation of racial segregation and apartheid | 405 - 408 | 75 |
| Article 4 | 409 - 417 | 76 |
| 4.1. Racial Hatred Act 1995 | 409 - 415 | 76 |
| 4.2. Reservation under article 4 | 416 | 77 |
| 4.3. Reconciliation | 417 | 77 |
| Article 5 | 418 - 511 | 77 |
| 5.1. Equal access to the law | 418 - 433 | |
| 5.2. Interpreters and translation services | 434 - 445 | 80 |
| 5.3. Equal access to employment | 446 - 492 | 83 |
| 5.4. Access and equity | 493 - 497 | 90 |
| 5.5. Social security | 498 - 511 | 91 |
| Article 6 | 512 - 534 | 93 |
| 6.1. Complaint handling mechanisms | 512 - 521 | 93 |
| 6.2. Brandy v Hreoc | 522 - 527 | 94 |
| 6.3. Human Rights and Equal Opportunity Commission | 528 - 534 | 95 |
| Article 7 | 535 - 549 | 96 |
| 7.1. ATSIC publications | 535 - 539 | 96 |
| 7.2. HREOC publications | 540 - 547 | 97 |
| 7.3. Reconciliation | 548 - 549 | 99 |

## Introduction

1. The Convention on the Elimination of All Forms of Racial Discrimination was signed for Australia on 13 October 1966 and ratified on 30 September 1975 with a reservation in relation to article 4 (a).

2. In accordance with article 9 of the Convention, Australia hereby submits consolidated report on the measures it has adopted and the progress made in achieving the aims of the Convention.

3. This report, Australia's tenth, eleventh and twelfth under the Convention, covers the period from 1 July 1992 to 30 June 1998.

4. In preparing the report Australia has attempted to identify the key issues arising under each article. The report serves as an update, providing analysis of relevant policy and programmes undertaken and information on outcomes and achievements.

5. The material included in the report should be considered in the context of the general constitutional and legislative structures in place in Australia. General information on the legal framework within which human rights are protected and measures taken to promote human rights in Australia are provided in the core document submitted by Australia. The core document also provides information on Australia's land and people and culture.

6. The Government of Australia, in order to assist the Committee to fulfil the tasks entrusted to it pursuant to article 9, has incorporated in the report, where possible, the text of relevant law, judicial decisions and regulations referred to herein.

## Australian population overview

7. It is important to appreciate not only the constitutional but also the social and demographic context of Australia's report.

### 1996 Census information

8. The following information is provided from the most recent (1996) Census.

| | |
|---|---|
| Total Australian population | 18 289 100 |
| Born overseas | 4 209 000 (23%) |
| Born overseas or having at least one parent born overseas | 50% |
| Of whom born in non-English speaking countries | More than half |
| Aboriginal or Torres Strait Islander (i.e. indigenous) Australians | 352 970 (2%) |

Main places of birth of the population

| | POPULATION (thousands) |
|---|---|
| United Kingdom and Ireland | 1 207.6 |
| New Zealand | 297.5 |
| Italy | 258.8 |
| Former Republic of Yugoslavia | 186.1 |
| Viet Nam | 149.9 |
| Greece | 144.6 |
| Germany | 118.9 |
| China | 103.4 |
| Hong Kong (including Macau) | 98.0 |
| Netherlands | 97.3 |
| Philippines | 94.7 |
| Total overseas | 4 209.0 |
| Australia | 14 080.2 |

Main settler arrivals by place of birth, Australia, 1992-1996

| | POPULATION (thousands) |
|---|---|
| United Kingdom and Ireland | 52.2 |
| New Zealand | 47.0 |
| China | 27.0 |
| Hong Kong (Macau) | 25.9 |
| Viet Nam | 20.1 |
| Philippines | 19.3 |

Religious affiliation (as self-identified by Census respondents)

| RELIGION | % |
|---|---|
| Christianity | 71.0 |
| Buddhism | 1.1 |
| Islam | 1.1 |
| Hinduism | 0.4 |
| Judaism | 0.4 |
| Other religions | 0.4 |
| No religion | 16.6 |
| Not stated/inadequately described | 9.0 |

## Conclusion

9. The Australian Government appreciates the careful and detailed consideration accorded by the Committee to earlier reports and looks forward to fruitful consideration of the present report. It is, in part, through such consideration that the standards to which States parties to the Convention aspire can be fully and satisfactorily realized to the benefit of all individuals.

## Article 2

### 2.1. Major federal measures

Racial Discrimination Act 1975 (RDA)

10. The RDA prohibits all forms of racial discrimination in all Australian jurisdictions, federal, state, and territorial. Although no separate legislation is required by states and territories to ensure Australia's compliance with the Convention, most States and Territories have also legislated in the area, enabling individuals to choose to pursue their complaints under either the federal or the relevant state or territory scheme.

11. Section 9 of the Act provides that:

> "It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life."

Section 9 also extends the prohibition of racial discrimination to acts of indirect racial discrimination.

12. The RDA makes it unlawful to discriminate against any person by reason of that person's race, colour or national or ethnic origin in a wide range of specific circumstances encompassing access to places and facilities; disposal and occupation of land or occupation of any land or any residential or business accommodation; provision of goods and services; the right to join trade unions; employment; and advertisements. In addition, section 17 of the RDA prohibits a person inciting the doing of an act that is rendered unlawful under the RDA. It is not necessary to show a discriminatory purpose, intention or motive in order to establish that an unlawful act has occurred.

13. Section 10 of the Act provides a right to equality under the law and ensures that persons of any particular race, colour or national or ethnic origin who do not enjoy the same rights enjoyed by people of another race, colour or national or ethnic origin, or enjoy these rights to a lesser extent, by reason of a Commonwealth, state or territory law, will enjoy their rights to the same extent. Section 10 extends to cover laws affecting property owned by Aboriginal or Torres Strait Islander peoples.

14. The most significant amendment to the RDA since the submission of the previous report was the introduction of the Racial Hatred Act 1995 (RHA), which commenced operation on 13 October 1995. The RHA makes provision in relation to racial hatred by inserting a new Part IIA in the RDA to provide for a civil prohibition on offensive, insulting, humiliating or intimidating behaviour based on race, colour and national and ethnic origin as additional grounds for investigation and conciliation under Australia's overall federal scheme of human rights legislation. Under the new racial hatred amendments to the RDA, individuals may complain to the Human Rights and Equal Opportunity Commission (HREOC) about actions done otherwise than in private because of race, colour or national or ethnic origin where the act is reasonably likely, in all the

circumstances, to offend, insult, humiliate or intimidate. (See under article 4 below for further discussion of the RHA.)

15. These provisions are additional to the large number of other prohibitions, discussed above, the contravention of which may be investigated and conciliated by HREOC under the RDA. The prohibition on offensive behaviour based on racial hatred is placed within the existing jurisdiction of HREOC to conciliate and/or determine complaints alleging breaches of the RDA. HREOC is able to screen out vexatious complaints and complaints lacking in merit or substance so that only well founded complaints are considered. (A general outline of current complaint mechanisms under the RDA is provided under article 6 below.)

Aboriginal and Torres Strait Islander Commission

16. The Aboriginal and Torres Strait Islander Commission (ATSIC) is the principal Commonwealth agency operating in the field of Aboriginal and Torres Strait Islander affairs. It is a key policy advisory body and is responsible for administering a diverse range of Commonwealth programmes for Indigenous Australians. It was established by the Aboriginal and Torres Strait Islander Commission Act 1989 (the ATSIC Act) and began operations on 5 March 1990, amalgamating the previous Department of Aboriginal Affairs (established in 1972) and Aboriginal Development Commission (established in 1980).

17. ATSIC is a unique, decentralized organization, combining representative, policy-making and administrative elements. Through ATSIC's representative arm, Aboriginal and Torres Strait Islander peoples may participate in the processes of government. Elected representatives are able to make decisions about the programmes and policies that affect their communities, at both the regional level and the national level.

18. ATSIC's statutory functions are set out in full in section 7(1) of the ATSIC Act. They are:

> "(a) To formulate and implement programs for Aboriginals and Torres Strait Islanders;
>
> (b) To monitor the effectiveness of programs for Aboriginal persons and Torres Strait Islanders, including programs conducted by bodies other than the Commission;
>
> (c) To develop policy proposals to meet national, State, Territory and regional needs and priorities of Aboriginal persons and Torres Strait Islanders;
>
> (d) To assist, advise and co-operate with Aboriginal and Torres Strait Islander communities, organisations and individuals at national, State, Territory and regional levels;
>
> (e) To advise the Minister on:
>
> (i) Matters relating to Aboriginal and Torres Strait Islander affairs, including the administration of legislation; and
>
> (ii) The co-ordination of activities of other Commonwealth bodies that affect Aboriginal persons or Torres Strait Islanders;

(f) When requested by the Minister, to provide information or advice to the Minister on any matter specified by the Minister;

(g) To take such reasonable action as it thinks necessary to protect Aboriginal and Torres Strait Islander cultural material and information, being material or information that is considered sacred or otherwise significant by Aboriginal persons or Torres Strait Islanders;

(h) At the request or with the concurrence of the Australian Bureau of Statistics but not otherwise, and without infringing the privacy of any individual, to collect and publish statistical information relating to Aboriginal persons or Torres Strait Islanders;

(j) Such other functions as are conferred on the Commission by this Act or any other Act;

(k) Such other functions as are expressly conferred on the Commission by a law of a State or of an internal Territory and in respect of which there is in force written approval by the Minister under s.8;

(m) Such other functions as are expressly conferred on the Commission by a law of a State or of an internal Territory and in respect of which there is in force written approval by the Minister under s.9;

(n) To undertake any research as is necessary to enable it to perform any of its other functions; and

(o) To do anything else that is incidental or conducive to the performance of any of the preceding functions."

19. The Aboriginal and Torres Strait Islander Commission Act 1989 is subject to an ongoing process of review and amendment. A second major review of the Act was instigated by the Board in April 1997 and the report was tabled in Parliament on 24 March 1998.

(i) Regional councils

20. In 1996-97 ATSIC's representative arm consisted of 35 regional councils around Australia, established through the election of Indigenous representatives. Elections are held every three years. The third round of ATSIC elections took place on 12 October 1996.

21. During 1996 the ATSIC Act was amended to reduce the number of councillors elected to each regional council, from a maximum of 20 to a maximum of 12. These reductions came into effect for the October 1996 ATSIC elections.

22. Though established under the ATSIC Act, the regional councils are independent bodies. They consult with their local communities and represent their interests. A chairperson and deputy chairperson are elected.

23. The ATSIC Act sets out the functions of the regional councils. These include formulating a regional plan to improve the social, economic and cultural life of local Aboriginal and Torres Strait Islander peoples, and making decisions on ATSIC expenditure in their regions. In 1996-97 regional councils administered approximately 58 per cent of the ATSIC programme budget.

(ii) Commissioners

24. Regional councillors elect 16 commissioners, one for each ATSIC zone. One commissioner is elected from the Torres Strait and two commissioners are appointed by the Minister for Aboriginal and Torres Strait Islander Affairs. The commissioners make up the ATSIC Board, which provides policy advice to the Minister.

(iii) Chairperson

25. Under current arrangements, the Chairperson of ATSIC is chosen by the Minister for Aboriginal and Torres Strait Islander Affairs from among the 19 commissioners. On 6 December 1996 the Minister appointed Mr Gatjil Djerrkura as Chairman. He replaced ATSIC's founding Chairperson, Miss Lois O'Donoghue, who retired on that date.

Office of Indigenous Policy

26. The Office of Indigenous Policy within the Department of Prime Minister and Cabinet provides policy advice to the Minister for Aboriginal and Torres Strait Islander Affairs, the Prime Minister and the Special Minister of State on a broad range of issues affecting Aboriginal and Torres Strait Islander peoples, including the process of reconciliation. The Office seeks to advance the Commonwealth's policy agenda for Indigenous peoples, while taking account of the Commonwealth's overall interests.

Funding of indigenous programmes

27. Australian (Commonwealth) Government funding of Indigenous specific programmes is now the highest on record ($1,887m in 1998-1999) including an increase in real terms over the past three years in a climate of extreme fiscal restraint overall. More than 70 per cent of these resources are devoted to the priority areas of housing, health, education and employment which have been protected ("quarantined") from spending reductions. ATSIC accounts for 55 per cent of total Commonwealth funding. Spending on Indigenous health has risen by 37 per cent in real terms over the past three years.

28. ATSIC is part of a large infrastructure of organizations - government and non-government - that provide services to Aboriginal and Torres Strait Islander peoples.

29. Commonwealth agencies, both inside and outside the portfolio of Aboriginal and Torres Strait Islander Affairs, provide financial assistance for Aboriginal and Torres Strait Islander advancement either:

Directly through grants to incorporated community organizations or, very rarely, to individuals; or

Through grants to state/territory governments (states grants).

30. Apart from ATSIC and the Office of Indigenous Policy, the Commonwealth agencies with the most extensive responsibilities in Indigenous affairs are the Department of Employment, Education, Training and Youth Affairs (DEETYA) and the Department of Health and Family Services.

31. State/territory governments also fund Indigenous programmes, either as special projects or as part of their provision of services to the general community. The Commonwealth emphazises that Aboriginal and Torres Strait Islander affairs are a shared responsibility with state/territory governments, and that it is the responsibility of the states or territories to provide normal community services - such as health care, education and infrastructure development - to their Aboriginal and Torres Strait Islander citizens.

32. To a large extent these statements also apply to local government. In recent years increasing efforts have been made to make this level of government more aware of its responsibilities towards Aboriginal and Torres Strait Islander communities.

33. In addition, an estimated 3,000 incorporated Aboriginal and Torres Strait Islander organizations - for example, health services, legal services, housing cooperatives, land councils, social, cultural and sporting bodies - undertake activities on behalf of their communities. The majority are funded by government agencies, including ATSIC. While most of these organizations are relatively small and serve only the local community, several operate at the state/territory or national level.

34. Incorporated organizations are the principal recipients of ATSIC funding and are important instruments of Indigenous self-management.

Inter-government relations

35. ATSIC has primary responsibility under its Act to monitor the effectiveness of programmes for Aboriginal and Torres Strait Islander peoples, including programmes conducted by bodies other than the Commission, and to develop policy proposals to meet the needs and priorities of Indigenous Australians at the national, state and regional levels.

36. The National Commitment to Improved Outcomes in the Delivery of Programmes and Services for Aboriginal Peoples and Torres Strait Islanders, endorsed by the Council of Australian Governments in 1992, provides an agreed policy framework for the Commonwealth, the states and territories and local governments to cooperate to address Indigenous disadvantage and to pursue social justice.

37. All signatories to the National Commitment have a role in implementing the principles of the policy framework. Coordinating all agencies to target strategically the causes of Indigenous disadvantage is not always an easy task. Nevertheless, there have been a number of positive cooperation and coordination developments at the Commonwealth, state, regional and local levels which support the shared commitment.

38. ATSIC, through the National Commitment and through its participation in the Ministerial Council for Aboriginal and Torres Strait Islander Affairs (MCATSIA, the forum for Commonwealth and state/territory ministers with responsibility for Indigenous affairs), continues to pursue equity for Indigenous peoples in respect to services delivered by other agencies and other levels of government.

Race Discrimination Commissioner

39. The position of the Race Discrimination Commissioner is established under section 19 of the RDA. Section 20 of the Act outlines the functions of the Commission in the area of racial discrimination which are carried out by the Commissioner. These functions are as follows:

To inquire into alleged infringements of the Act and endeavour by conciliation to effect settlements of the matters alleged to constitute those infringements;

To promote an understanding and acceptance of, and compliance with, the Act;

To develop, conduct and foster research and educational programmes and other programmes for the purpose of:

Combating racial discrimination and prejudices that lead to racial discrimination;

Promoting understanding, tolerance and friendship among racial and ethnic groups; and

Propagating the purposes and principles of the Convention;

To prepare, and to publish guidelines for the avoidance of infringements of the Act; and

Where the Commission considers it appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, to intervene in proceedings that involve racial discrimination issues.

40. Recently, the Federal Government announced its intention to restructure the HREOC. (Details of the proposed restructure are provided in the information under article 6 below.) The restructure will replace five of the six existing commissioners with three deputy presidents, one of whom will continue to have general responsibility for the areas of race discrimination and social justice. This will ensure that racial discrimination issues remain an important focus for the Commission's work.

41. During the reporting period, the Race Discrimination Commissioner produced four State of the Nation reports. In addition, the Commissioner also completed the Water Report, the Mornington Report, the Mornington Island Review Report and the Alcohol Report.

Water Report

42. A Report on the Provision of Water and Sanitation in Remote Aboriginal and Torres Strait Islander Communities (the Water Report) was tabled in Federal Parliament in February 1994. The Water Report was the result of a large-scale study into the provision of basic water and sanitation services to Aboriginal and Torres Strait Islander communities, particularly those in remote parts of Australia. The report made a series of recommendations to government to assist Aboriginal and Torres Strait Islander communities to gain a more equitable

distribution of resources in an appropriate and non-intrusive manner, and concluded that any long-term solutions depended upon Indigenous community control of decision-making and resource allocation processes. In 1994-95 the Commission monitored the progress of implementation by liaising with various case study communities.

Mornington Island Reports

43. The first Mornington Island Report came about as the result of representation in the form of a petition to the Commissioner signed by 163 Aboriginal residents on Mornington Island in the Gulf of Carpentaria. It called for the investigation of a specific incident involving police-Aboriginal relations, and the report was broadened to include a range of social issues (such as drunkenness, juvenile justice and lack of employment options) which had an indirect bearing on the incident.

44. Twelve months after the release of the Commission's Mornington Report in 1993, the Commissioner promised a review of the implementation of the 91 recommendations contained in the report. The results of the review were published in 1995 as the Mornington Island Review Report. Echoing the findings of the original report, the Review Report found that the political, economic and social problems which beset communities like Mornington Island will not be resolved until the resources, planning and decision-making processes are under Indigenous control.

Alcohol Report

45. The Alcohol Report, produced by the Commission in 1995, is a complex study of the inter-relationship between racial discrimination, human rights and the distribution of alcohol in the Northern Territory. It was initiated because of concerns expressed to the Racial Discrimination Commissioner by several Aboriginal communities about the effects of alcohol abuse on their communities. The report affirmed the right of Aboriginal communities to demand restrictions on the distribution of alcohol for the benefit of all community members. The Commissioner promotes restrictions on the sale of alcohol where it is the expressed wish of Aboriginal communities. Feedback to date indicates that these measures have had a positive impact on Aboriginal communities in the Northern Territory. The Commission continues to monitor progress in this area.

Aboriginal and Torres Strait Islander Social Justice Commissioner

46. The Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner was established under the Human Rights and Equal Opportunity Legislation Amendment Act (No.2) 1992 (HREOCA). The office was created in response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) and the National Inquiry into Racist Violence, both of which noted the need for ongoing monitoring of the human rights of Indigenous Australians. The Act came into force on 13 January 1993.

47. Section 46C of HREOCA outlines the functions of the Commission, which are carried out by the Commissioner pursuant to section 46C(2). These functions are as follows:

> To submit yearly reports to the Attorney-General on the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait

Islanders, including recommendations as to the action that should be taken to ensure the enjoyment and exercise of human rights by those persons;

To promote discussion and awareness of human rights in relation to Aboriginal persons and Torres Strait Islanders;

To undertake research and educational programmes, and other programmes, for the purpose of promoting respect for the human rights of Aboriginal persons and Torres Strait Islanders and promoting the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders;

To examine enactments, and proposed enactments, for the purpose of ascertaining whether they recognize and protect the human rights of Aboriginal persons and Torres Strait Islanders, and to report to the Minister the results of any such examination.

48. Under section 46C, the Commissioner, in the performance of his or her functions must, as appropriate, have regard to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child, and such other instruments relating to human rights as the Commissioner considers relevant. Also, the Commissioner may consult with domestic and international Indigenous organizations and other organizations, agencies or persons that the Commissioner considers appropriate in the course of carrying out his or her functions. The Act provides the Commissioner with the power to obtain documents and information from government agencies if there is reason to believe the agency has information or a document relevant to the functions of the Commission.

49. In addition, under section 209 of the Native Title Act 1993 (Commonwealth), the Aboriginal and Torres Strait Islander Social Justice Commissioner must prepare and submit to the Commonwealth Minister yearly reports on the operation of the Native Title Act and the effect of the Act on the exercice and enjoyment of human rights of Aboriginal peoples and Torres Strait Islanders. The Commissioner may also be directed by the Minister at any time to prepare reports on particular matters relating to the operation and the effects of the Native Title Act 1993.

50. Under the Federal Government's proposed restructure of the HREOC, of which the Aboriginal and Torres Strait Islander Social Justice Commissioner is a member, the position of Social Justice Commissioner would no longer exist. However, under the proposed restructure, one of the deputy presidents in the new Commission will have general responsibility for issues relating to Aboriginal and Torres Strait Islander social justice and race discrimination, and the Commission will continue to perform the functions of the Social Justice Commissioner, including those under the Native Title Act 1993.

2.2. The process of reconciliation

51. As stated in Australia's previous report, Australia has established a formal process of reconciliation between Aboriginal and Torres Strait Islander peoples and other Australians over the decade to 1 January 2001, the centenary of Australia's federation. The Council for Aboriginal Reconciliation Act 1991

was passed in recognition that Aboriginal people and Torres Strait Islanders had occupied Australia for thousands of years before British settlement, that many had suffered dispossession and dispersal from their traditional lands, and that there had been no formal process of reconciliation between them and other Australians. The Act was passed unanimously by the Australian Parliament.

52. The Act established a Council for Aboriginal Reconciliation with the aim of promoting a process of reconciliation between Aboriginal people and Torres Strait Islanders and the wider Australian community. The Council has 25 members, of whom 12 must be Aboriginal people and 2 Torres Strait Islanders, and must be chaired by an Aboriginal person. The current chair of the Council is Ms Evelyn Scott.

53. The Council has a wide range of functions including:

To promote by leadership, education and discussion a deeper understanding by all Australians of the history, cultures, past dispossession and continuing disadvantage of Aboriginal people and Torres Strait Islanders and the need to address that disadvantage;

To foster an ongoing national commitment to cooperate in addressing Aboriginal and Torres Strait Islander disadvantage; and

To consult Aboriginal people and Torres Strait Islanders and the wider Australian community on whether reconciliation would be advanced by a formal document of reconciliation and on its content.

54. The Council has just commenced its third and final three-year term. The first two terms have seen a wide range of achievements. In its first term, from 1992 to 1994, the Council:

Engaged 13 Indigenous organizations to carry out consultations with Aboriginal and Torres Strait Islander communities around the country on the subject of reconciliation;

Engaged in work to promote greater cooperation and communication between Indigenous people and mining interests through the establishment of a Mining Committee and a Joint-Council on Aboriginal Land and Mining;

Conducted consultations with religious groups, women's organizations and local governments which led to significant community action on reconciliation including, for example, a Week of Prayer;

Launched a grass-roots network, "Australians for Reconciliation", to promote reconciliation at the local level;

Promoted educational activities related to reconciliation through the co-sponsoring of conferences on reconciliation, the production of information materials and discussion papers, the launching of the International Year of Indigenous Peoples and the establishment of study groups;

Formulated strategies to facilitate the access of Indigenous peoples to mainstream media; and

Presented two major reports: the report on the Council's first term, Walking Together: the First Steps, and a report advancing the cause of social justice, Going Forward: Social Justice for the First Australians.

55. The highlight of the Council's second term, from 1995 to 1997, was the Australian Reconciliation Convention in May 1997. The Council organized the Convention to enable a wide cross-section of Australians to review progress in the reconciliation process and to plan an agenda of achievable goals for the Council's final term.

56. More than 1,800 people attended the Convention and about 10,000 more participated in regional lead-up meetings organized across the country. This Convention was a significant national event, giving further impetus to the reconciliation process and acting as a catalyst for a growing people's movement for reconciliation.

57. Another initiative was the Council's commencement of work on "benchmarking" to develop a practical and effective framework against which federal, state and territory governments can be held accountable for achieving progress in overcoming Indigenous disadvantage. This continuing work centres on identifying targets for addressing Indigenous needs that are informed by cultural and geographic realities, and promoting examples of best practice to achieve targets for service delivery to Indigenous Australians. This complements the Government's own initiatives in regard to ensuring accountability for financial operations and programme outcomes to ensure that the resources allocated to Indigenous affairs are spent in a way that will provide maximum benefit to Indigenous peoples and communities.

58. During its second term the Council also consolidated earlier work by

Continuing to support the grass-roots network, "Australians for Reconciliation";

Initiating an annual National Reconciliation Week from 27 May to 3 June to highlight the reconciliation process; and

Continuing public education and research activities.

59. During its third and final term, from 1998 to 2000, the Council will be guided by a comprehensive strategic plan which focuses on achieving outcomes for the reconciliation process that Australians can celebrate as they enter the new millennium. The Council will focus on supporting and maintaining a broad-based people's movement for reconciliation to ensure that the process of reconciliation continues beyond the life of the Council itself. The Council aims to secure the commitment and action of governments, key organizations and individuals to achieve social and economic equality for Indigenous Australians. The Council will also work to reach agreement on a national document of reconciliation and to promote the recognition of Indigenous Australians in the Australian Constitution.

2.3. Indigenous Australians

Comparison of the situations of Aboriginal and Torres Strait Islander peoples and of the broader Australian community

60. Since the 1967 referendum, which established federal government power to make laws specifically for Indigenous Australians, the Commonwealth government has spent some $24 billion (1997 prices) on Indigenous-specific programmes, including $20 billion in the past 15 years. The results have been mixed. Aboriginal housing and home ownership have improved remarkably over recent decades but at the same time the recorded Indigenous population has doubled. School retention rates have improved significantly but also lag behind non-Indigenous rates. Infant mortality has dropped substantially but life expectancy remains low, mainly because of adult lifestyle factors. Record numbers of Indigenous Australians are enrolled in higher education but, elsewhere, lack of job skills and remoteness continue to contribute to high unemployment rates. The Indigenous deaths in custody rate is now lower than the non-Indigenous rate but incarceration rates remain hugely disproportionate to the population ratio. More than 15 per cent of the Australian continent is now Aboriginal owned or controlled but socio-economic inequality remains a persistent reality. The government's Indigenous affairs policy recognises that Aboriginal and Torres Strait Islander people are severely disadvantaged in comparison with the general community. Since first coming to office in 1996, the Government has concentrated effort, in its Indigenous policy, in the areas of greatest need - health, housing and infrastructure, education and training, and employment. By specifically targeting these areas of severe socio-economic disadvantage, particularly in remote communities, the Government will produce improved outcomes for the most needy Indigenous Australians.

Population 1/

61. The Indigenous population of Australia in 1996 was 352,970 representing 2 per cent of the total Australian population. The Indigenous population had increased by 33 per cent (87,599) since 1991, while the total Australian population had grown by 6 per cent. As well as a high rate of intermarriage, this rapid growth in the Indigenous population may reflect a greater willingness to indicate Indigenous origins in the 1996 census than in previous censuses. The median age of the Indigenous population was 20 years, compared to 34 years for the non-Indigenous population (i.e. half of the Indigenous population is 20 years old or less).

Health

62. Indigenous people suffer worse health and die younger than non-Indigenous Australians, for example life expectancy for Indigenous people is 15 to 20 years lower than the non-Indigenous population and Indigenous people are 15 to 18 times more likely to die from infectious diseases than the non-Indigenous population.

63. The Government is committed to addressing these problems and in 1998-99 funding of $168 million will be allocated to Indigenous health programmes, representing a 37 per cent real increase since 1995-96. In the 1998-99 Budget, the Government allocated an additional $73 million over the next four years to assist in improving primary health care for Aboriginal and Torres Strait

Islander people. This increase recognizes the significant growth in the Indigenous population.

Housing

64. Over 20 per cent of Indigenous families live in dwellings that are in need of repair or do not have basic amenities such as toilets, bathrooms and running water, and Indigenous Australians are five times more likely to be public housing tenants than the population as a whole. For households with Indigenous occupants, the average household size was 3.7 persons per dwelling, compared to 2.7 for dwellings with no Indigenous occupants.

65. In November 1996, the Government announced an initiative in which the Army would assist ATSIC and the Department of Health and Aged Care (DHAC) in providing urgently needed health-related infrastructure, including water and sewerage systems, to seven of the most needy remote communities. Under this ATSIC/Army Community Assistance Programme (AACAP) the Army has provided equipment, personnel and expertise free of charge and ATSIC and DHAC have each contributed $5 million for capital works, administered under the ATSIC Community Housing and Infrastructure Programme (CHIP). The Government has recently announced the continuation of this initiative at the same level of resources (i.e. $10 million).

66. The Government has two targeted programmes for providing housing and infrastructure to Indigenous people. These are CHIP and the Aboriginal Rental Housing Programme (ARHP), which is administered by the Department of Family and Community Services. CHIP funding is principally delivered through Indigenous housing organizations, whereas ARHP is delivered through state housing authorities as a targeted subset of the Commonwealth/State Housing Agreement. As well as housing, CHIP provides funding for infrastructure and essential services. Total funding for these programmes will be $308 million in 1998-99. A recent review of the two programmes looked at possible duplication and overlap and ways to improve the delivery of housing and infrastructure to Indigenous Australians most in need, and the Government is currently considering its findings.

67. An important component of CHIP is the Health Infrastructure Priority Projects (HIPP) programme that ensures an efficient and holistic approach to housing and infrastructure provision in communities with the greatest overall need. Under HIPP, communities are funded for their overall needs in priority order, in accordance with rankings in the Housing and Community Infrastructure Needs Survey which looked at needs in the essential areas of housing, water, sewerage, power and roads.

68. Funding for CHIP, which has been maintained and adjusted for inflation since the Government first came to office in 1996, will be $217 million in 1998-99. This programme has been specifically quarantined by the Government from any overall reductions in the ATSIC budget. Funding to ARHP for Indigenous public housing is $91 million per annum. ARHP provides around 550 houses per annum, as well as funding major upgrades, repairs and maintenance. In 1998-99 ATSIC anticipates that CHIP will provide 590 new or replacement houses, with a similar number being renovated.

69. Across Australia, 31 per cent of Indigenous peoples owned or were purchasing their homes compared to 72 per cent of all non-Indigenous

Australians. Many Indigenous Australians cannot obtain finance from banks and building societies because their incomes are too low and they cannot afford high repayments.

70. Aboriginal people and Torres Strait Islanders on low incomes have access to strictly means-tested concessional home loans from ATSIC. Interest on those loans starts at 5 per cent per annum and increases by 0.5 per cent per annum until it reaches the ATSIC home loan rate (set at no more than one per cent below the Commonwealth Bank variable housing loan interest rate). For families with an income of less than $25,000 a reduced commencing interest rate may apply.

71. ATSIC expects to approve 460 new loans in 1998-99. All loan recipients pay between 20 and 30 per cent of their gross income in loan repayments.

Education

72. In 1997, of those students who began secondary schooling, 31 per cent of Indigenous students continued on to Year 12 compared to 73 per cent of all other students. Nineteen per cent of Indigenous students who began secondary school left before Year 10 compared to 2 per cent of all other students. Between 71 per cent and 81 per cent of Indigenous Year 3 and Year 5 students cannot read or write English at appropriate standards, compared with 27 per cent to 33 per cent for all students. Forty-four per cent of Indigenous people aged 15 to 19 years participate in some form of education and training compared to 72 per cent of other Australians in this age group. Results from the 1996 Census indicated that 13.6 per cent of Indigenous Australians aged 15 years and over reported having post school qualifications (4.2 per cent at Associate Diploma level or above) compared with 34.4 per cent of the total population of this age (16.5 per cent at Associate Diploma level or above). Of the people completing the Census, 10.1 per cent of Indigenous Australians and 7.5 per cent of the total population did not respond to this question. Of this age group, a further 4.1 per cent of Indigenous Australians were studying for a tertiary qualification compared with 6.1 per cent of the total population. Of the people completing the Census, 5.1 per cent of Indigenous Australians and 4.1 per cent of the total population did not respond to this question.

Employment

73. In the total Indigenous labour force 24,233 people were unemployed and 82,347 people were employed, giving an unemployment rate of 23 per cent for Indigenous people compared to 9 per cent for the total population. Participation rates for Indigenous people were lower than for the total population (50 per cent compared to 60 per cent).

Income

74. Indigenous household incomes were on average lower than those for other households, with 39 per cent of Indigenous households earning less than $500 per week compared to 36 per cent for other households. At the upper income levels 5 per cent of Indigenous households had incomes over $1,500 per week compared to 10 per cent of other households.

Royal Commission into Aboriginal Deaths in Custody

75. The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) was established by the Commonwealth, states and the Northern Territory on 16 October 1987 to investigate the deaths of 99 Aboriginal and Torres Strait Islander people in custody between 1 January 1980 and 31 May 1989. The Commission was tasked with examining the circumstances of the deaths, the actions taken by authorities and the underlying causes of Indigenous deaths in custody, including social, cultural and legal factors.

76. The investigation found that while Indigenous and non-Indigenous people have similar death rates in custody, Indigenous people come into contact with the criminal justice system at a disproportionately high rate. The Commission concluded that the most significant reason for this was the severely disadvantaged position of many Indigenous people in society - socially, economically and culturally.

77. The Commission's report addressed 339 recommendations to the Commonwealth, state and territory governments on a wide range of issues, including measures to eliminate Indigenous disadvantage and changes to policing, custodial facilities and procedures. All governments have reported on an annual basis how they have implemented, either partially or fully, the recommendations of the Royal Commission.

78. In 1992 the Commonwealth allocated significant funding of $400 million to Commonwealth agencies to support the implementation of 338 of the 339 recommendations. Most of this money was channelled through ATSIC. Responsibility for implementing the recommendations is shared between the Commonwealth and state and territory governments with each jurisdiction reporting annually on implementation.

79. The Commonwealth Government's fifth and final annual report on implementation (1996-97) acknowledged that the increasing over-representation of Indigenous people in custody and rates of contact with the criminal justice system needs to be addressed with an integrated and sustained effort by all Australian governments.

80. As at June 1998, indigenous people made up 2.1 per cent of the Australian population but approximately 18.8 per cent of the prison population. In 1998 there were 16 indigenous deaths in custody and these represented just over 17 per cent of all custodial deaths.

81. To address the situation of high rates of incarceration and deaths of Indigenous prisoners, the Commonwealth convened the Ministerial Summit on Indigenous Deaths in Custody in July 1997. The Summit was attended by Indigenous representatives and ministers from Commonwealth, state and territory governments with responsibility for justice, policing, correctional services and Indigenous affairs.

82. At the Summit, it was recognized that reducing the custodial over-representation of Indigenous people and implementing the recommendations of RCIADIC is a shared responsibility of all governments and all Australians.

83. The Summit produced a Communiqué that resolved to address the over-representation of Indigenous peoples in the criminal justice system through the

development of strategic plans to be agreed between state and territory governments or Indigenous communities. Development of the strategic plan is being facilitated by Indigenous justice committees at the state, territory and Commonwealth levels.

84. These strategic plans will address the coordination of funding and service delivery for Indigenous programmes and services. Particular issues that will be considered include jurisdictional targets for reducing the overall rate of over-representation of Indigenous people in the criminal justice system; planning mechanisms; methods of service delivery; and monitoring and evaluation.

85. The Commonwealth Government acknowledges that the serious socio-economic disadvantage suffered by Indigenous people is a major factor in their over-representation in the criminal justice system. The Commonwealth is committed to addressing this disadvantage to ensure that Indigenous people are able to participate fully in Australian social and economic life. Total Commonwealth spending on Indigenous-specific programmes in 1998-99 will be $1,887 million, the highest on record, with a substantial proportion of this money allocated to the key areas of health, housing, education and employment. Following the presentation of the Royal Commission's report, funding for Aboriginal legal aid, as a means of reducing incarceration rates, was increased by 145 per cent in the financial year 1992-93. Funding levels have remained fairly constant since that time.

National Aboriginal and Torres Strait Islander Community Education Programme

86. Recommendation 211 of the Royal Commission into Aboriginal Deaths in Custody states:

> "211. That the Human Rights and Equal Opportunity Commission and State Equal Opportunity Commissions should be encouraged to further pursue their programmes designed to inform the Aboriginal community regarding anti-discrimination legislation, particularly by way of Aboriginal staff members attending at communities and organizations to ensure the effective dissemination of information as to the legislation and ways and means of taking advantage of it."

87. The National Aboriginal and Torres Strait Islander Community Education Programme (NCEP) forms the core implementation of recommendation 211. Commonwealth funding was allocated to HREOC to develop a community education package designed to inform Aboriginal and Torres Strait Islander people about their rights and the protection available under anti-discrimination and other legislation. It provides information about human rights and anti-discrimination legislation to empower Indigenous people throughout Australia to deal with the discrimination that happens in their daily lives. The NCEP is a community education package designed to encourage Indigenous people to clearly identify the root of a problem or conflict, and look for positive solutions. The emphasis is on finding solutions which can be primarily enacted at the community level.

88. A resource for the state of Queensland, "Tracking your rights", was produced in 1992 under the Human Rights and Equal Opportunity Commission's Community Relations Strategy. The design and development process of this Queensland resource was used as a prototype for the NCEP. The NCEP package, also titled "Tracking your rights", was developed regionally by extensive

consultations in over one hundred and twenty rural, remote, island, urban and shire communities during the period 1992 - 1997.

89. The specific objectives of developing this project include:

Diverting Aboriginal and Torres Strait Islander peoples from custody;

Enabling Aboriginal and Torres Strait Islander communities to establish and protect community standards for their human rights; and

Empowering Aboriginal and Torres Strait Islander peoples to solve community relations problems at the local level through an understanding and assertion of their rights.

90. Three regional resource packages, one for Western Australia, one for the Northern Territory and South Australia and one for New South Wales, Tasmania, Victoria and the Australian Capital Territory, have been completed. Each "Tracking your rights" package includes:

A regional resource which aims to assist Aboriginal and Torres Strait Islander peoples to use anti-discrimination laws and other mechanisms. This resource provides information specific to each region on key rights and issues such as racism in education, consumer rights and employment and industrial relations, appeals and complaints procedures, such as state and Commonwealth Ombudsmen, Local Court Small Claims Divisions and the Office of Consumer Affairs and Fair Trading, and national and international human rights standards and agencies including HREOC and the United Nations;

An accompanying train the trainer manual;

National video and trainer manual; and

A mediation audio tape which discusses different models of mediation and alternate dispute resolution titled "Working it out locally".

91. Implementation of the NCEP continues to present difficulties and alternative funding sources must now be sought for full national implementation of the NCEP to occur.

National Aboriginal and Torres Strait Islander Legal Curriculum Development Project

92. Recommendation 212 of the Royal Commission into Aboriginal Deaths in Custody states:

"212. That the Human Rights and Equal Opportunity Commission and State Equal Opportunity Commissions should be encouraged to consult with appropriate Aboriginal organizations and Aboriginal Legal Services with a view to encourage and enable Aboriginal people to utilise anti discrimination mechanisms more effectively, particularly in the area of indirect discrimination and representative actions."

93. The National Aboriginal and Torres Strait Islander Legal Curriculum Development Project (NILCD) forms the core implementation of recommendation 212 of the Royal Commission into Aboriginal Deaths in Custody.

94. The project is based on the following:

That there is no national accredited legal training course for Aboriginal and Torres Strait Islander peoples focusing on the legal and human rights of Indigenous peoples;

That the empowerment of Aboriginal peoples is substantially dependent on their ability to understand and access government services and mechanisms for the protection of their human rights and legal rights, both nationally and internationally; and,

That field officers in Aboriginal and Torres Strait Islander Legal Services possess the skills, experience and knowledge of their local community essential to their work, but are severely restricted by the lack of culturally appropriate training courses, as well as the expense and difficulty of accessing accredited training courses.

95. The general objectives of the project are to substantially upgrade the level of professional assistance that field officers are able to provide through the creation of higher quality education accessible throughout Australia.

96. The curriculum is complete and nationally accredited courses focusing on the legal and human rights of Aboriginal and Torres Strait Islander peoples are to be offered at the community, vocational and university level. The curricula and courses are the product of collaborative development. Community service, government and non-government organizations have willingly given their time and contributed their ideas to the NILCD project.

Social justice strategy

97. In early 1994 the Government sought reports from ATSIC and the Council for Aboriginal Reconciliation on a range of measures which would address the dispossession of Aboriginal and Torres Strait Islander peoples and could be considered as part of the Government's response to the 1992 High Court decision on native title.

98. In developing its report ATSIC undertook a consultation process with wider Indigenous interests, including other Aboriginal and Torres Strait Islander organizations. This included comprehensive community consultations jointly sponsored with the Council for Aboriginal Reconciliation. The Council for Aboriginal Reconciliation (CAR) also consulted with a range of non-Indigenous community interests.

99. ATSIC's report, Recognition, Rights and Reform, covered a range of contemporary issues of concern to Indigenous people, including issues relating to recognition and empowerment, Indigenous rights, compensation and reparation, citizenship entitlements, cultural integrity, heritage protection and economic development. Similar issues were addressed in the complementary report Going Forward: Social Justice for the First Australians.

100. The reports was presented to the Government in early 1995. At the time of the 1996 election there had been no government response to the social justice reports. However pending such a response, the Government had provided an amount of $1.5 million to the Commission and the Council in the 1995- 96 budget to

further develop the social justice proposals. A further allocation of $1.5 million was promised for 1996-97 and this commitment was subsequently met.

101. The Minister wrote to the Chairperson of ATSIC in May 1997 advising that the Government did not intend to announce specific initiatives in response to the social justice reports. ATSIC and the Council for Aboriginal Reconciliation have responsibility for the implementation of the appropriate recommendations as part of their usual functions.

National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families

102. The Human Rights and Equal Opportunity Commission conducted a major inquiry during the reporting period into the separation of Aboriginal and Torres Strait Islander children from their families. The enquiry was required to trace the historical practice of forcibly removing Indigenous children from their families, and the effects of that removal. Formal terms of reference were issued on 11 May 1995 and revised in August 1995.

103. The terms of reference required HREOC to:

"a) trace the past laws, practices and policies which resulted in the separation of Aboriginal and Torres Strait Islander children from their families by compulsion, duress or undue influence and the effects of those laws, practices and policies;

"b) examine the adequacy of and the need for any changes in current laws, practices and policies relating to services and procedures currently available to those Aboriginal and Torres Strait Islander peoples who were affected by the separation under compulsion, duress or undue influence of Aboriginal and Torres Strait Islanders children from their families, including but not limited to current laws, practices and policies relating to access to individual and family records and to other forms of assistance locating and reunifying families;

"c) examine the principles relevant to determining the justification for compensation for persons or communities affected by such separations;

"d) examine current laws, practices and policies with respect to the placement and care or Aboriginal and Torres Strait Islander children and advice on any changes required taking into account the principles of self determination by Aboriginal and Torres Strait Islander peoples.

"In performing its functions in relation to the terms of reference, the Commission is to consult widely among the Australian community, in particular with Aboriginal and Torres Strait Islander communities, with relevant non-government organizations and with relevant Federal, State and Territory authorities and if appropriate may consider and report on the relevant laws, practices and policies of any other country."

104. The report of the inquiry, Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families was tabled in the Commonwealth Parliament on 26 May 1997. It contains detailed information concerning the legislative history of state, territory and Commonwealth laws applying specifically to Indigenous children and general child

welfare and adoption laws. In all Australian states and territories from around 1900 onwards legislation was enacted to deal with Indigenous children in accordance with the policy of assimilation and protection. These enactments outlined procedures and criteria by which Indigenous children could be made wards of the State and removed from their families. Legal enactments concerning Indigenous child welfare were progressively repealed in the 1950s and 1960s.

105. The inquiry found that these legislative regimes were racially discriminatory in that they established legal regimes for Indigenous children and their families which were distinct and inferior to those for non-Indigenous children and their families. The inquiry further found that many of the discriminatory practices that evolved under these specific enactments continued after the enactment of general child welfare legislation in the states and the Northern Territory. The inquiry found that between one in three and one in ten Indigenous children were removed from their families and communities between 1910 and 1970.

106. The report made 54 recommendations which cover the responsibilities of the Commonwealth and state and territory governments as well as non-government agencies. The recommendations can be broadly grouped into three categories: reparation or compensation for the individuals separated, their families, communities and descendants; reunion, health and other services for those affected by past policies and practices; and measures to address contemporary separation practices, in particular legislation to govern adoption, child welfare and juvenile justice procedures. The report concluded that ''assisting family reunions is the most significant and urgent need of separated families'' (page 347).

107. The Commonwealth Government officially responded to the report on 16 December 1997. In responding to the report the Commonwealth Government has focused on addressing the fundamental issue of family separation and its consequences, providing funding of $63 million over four years for initiatives aimed at facilitating family reunion and assisting Indigenous people to cope with the stress and trauma of family separation. The Commonwealth's response also acknowledges the legacy of past practices and complements its primary policy objective in Indigenous affairs which is to address the effects of the severe socio-economic disadvantage suffered by many Indigenous people. The initiatives announced by the Commonwealth include the following:

108. Facilitating family reunion. More than $11 million has been allocated to the Aboriginal and Torres Strait Islander Commission to establish a national network of family reunion centres. These centres will help Indigenous people locate information about missing family members and to establish first contact with their families. They will also provide initial counselling services. To assist this process, the National Archives of Australia has been given $2 million to index, copy and preserve thousands of files held by the Commonwealth to improve accessibility to necessary records.

109. Improving counselling and support services. More than $30 million has been allocated for the appointment of 50 new counsellors and to expand appropriate clinical support services to assist people suffering from trauma and emotional distress as a result of past separation or the family reunion process.

110. Improving family support. The Commonwealth Government acknowledges that the lack of opportunity for many indigenous people separated from their families

to experience family life is a contributory factor in the inter-generational disadvantage experienced by Indigenous people today. Accordingly, close to $6 million has been allocated to enable further development of Indigenous family support and parenting programmes.

111. In addition, money has been made available for the preservation, revival, maintenance and development of Indigenous languages and for an oral history project which will provide the opportunity for Indigenous people and others to tell their stories of family separation.

112. There has been considerable media and public interest in the report in Australia and overseas. Much of this interest has focused on recommendation 5a of the report which calls on all Australian parliaments to acknowledge and apologize for the actions of their predecessors in relation to laws, policies and practices related to the forcible removal of Indigenous children. While both the Prime Minister and the Minister for Aboriginal and Torres Strait Islander Affairs have expressed their personal feelings of deep sorrow in relation to the injustices suffered by Indigenous people as a result of the practices of past generations, the Commonwealth Government does not support a formal national apology. Such an apology could imply that present generations are in some way responsible and accountable for the actions of earlier generations, actions that were sanctioned by the laws of the time.

113. In relation to the report's recommendations dealing with compensation for Indigenous people separated from their families, the Commonwealth Government made a submission to the inquiry that argued that the provision of monetary compensation would not be appropriate, not least because: the practices were sanctioned by law at the time; they were designed at the time to assist the people whom they affected; and there would be serious difficulties involved in devising an equitable and workable scheme for compensation. This position remains unaltered; the Commonwealth's approach is to respond to current needs by providing funding for initiatives aimed at facilitating family reunion, and to deliver programmes aimed at achieving concrete outcomes in health, housing, education and employment.

114. The issues involved in the current separation of Indigenous children, that is adoption, child welfare and juvenile justice, are all matters for state and territory governments under Australia's Constitution. At the August 1997 meeting of the Ministerial Council for Aboriginal and Torres Strait Islander Affairs (MCATSIA) it was agreed that the HREOC recommendations for legislation would be considered on a state-by-state rather than a national basis. To date, a number of states have officially responded to the report or issued interim responses. It is expected that all states and territories will have finalized their responses to the report by the end of 1998. MCATSIA will monitor the responses and the implementation process.

Genocide

115. Following submissions regarding alleged historical breaches of the Genocide Convention made by the National Aboriginal and Islander Legal Services Secretariat, the Royal Commission into Aboriginal Deaths in Custody found that the child removal policies did not amount to genocide as they were adopted "not for the purpose of exterminating a people, but for their preservation". The report of the Human Rights and Equal Opportunity Commission (HREOC) disagreed with the finding of the Royal Commission, pointing to what it calls ''much wider

research'' (page 273) without supporting this in detail. HREOC concluded that a principal aim of the child removal policies was to eliminate Indigenous cultures as distinct entities and that this amounted to cultural genocide.

116. The Genocide Convention defines genocidal acts as including the forcible transfer of the children of one group to another group. However, such acts must be done with a specific intent to destroy, in whole or in part, a national, ethnic, racial or religious group. The Government does not accept that the past policies were driven by an intent to destroy Indigenous people.

117. The issue of cultural genocide was debated by the drafters of the Genocide Convention and the decision was taken to exclude the concept of cultural genocide from the Convention. Genocide is a term with particular legal meaning, which does not extend to the adverse impact and disruption of a culture.

118. The Australian Court considered this issue in the case of Kruger v. The Commonwealth (1997) 146 ALR 126. All of the High Court judges who considered the issue of whether past child removal practices in the Northern Territory constituted genocide found that the actions did not fall within the definition of genocide.

2.4. Migrant Australians

Migration Act

119. The Government's commitment to eliminating racial discrimination is demonstrated partly through its legislative scheme in the migration area. This scheme does not contain any broad and unaccountable discretionary powers to refuse the grant of a visa. To the contrary, visa applicants who satisfy certain basic criteria for the grant of a particular visa have a legally enforceable entitlement to that visa. In particular, this scheme guarantees all applicants, regardless of their racial origins - provided basic criteria are met - a right to be granted the visa for which they have applied.

120. The Migration Act also contains provisions, such as section 501, which empowers a properly delegated decision maker with discretion to refuse or cancel a visa on broad character grounds. The overall objective of the character requirement is to exclude or remove from Australia persons whose conduct or association with individuals or organizations is such that their presence in Australia would not be in the interests of the Australian community or a segment of that community. One basis for the discretion to refuse or cancel a visa is if the Minister or delegate is satisfied that the person would vilify a segment of the Australian community or incite discord in the Australian community, or a segment of it.

HREOC submission to NMAC

121. In March 1998, in response to a policy paper from the Federal Minister for Immigration and Multicultural Affairs, Multicultural Australia: the Way Forward, HREOC lodged a comprehensive submission strongly in support of the Federal Government maintaining the policy of multiculturalism. The submission identified Australia's international obligations in the areas of racial and ethnic diversity, with extensive reference to the International Conventions on the Elimination of All Forms of Racial Discrimination. Following consideration of

submissions by the National Multicultural Advisory Council (NMAC), recommendations are expected to be made to the Federal Government in mid 1999.

State of the Nation reports

122. During the period covered by the tenth, eleventh and twelfth reports, the Race Discrimination Commissioner has produced four State of the Nation reports examining the position of people of non-English speaking backgrounds in Australia. These reports have highlighted the ongoing disadvantages faced by non-English speaking people in the areas of employment, housing, education, health, aged care and within the justice system. The State of the Nation reports contained recommendations to the Government which are currently being pursued by the Race Discrimination Commissioner. The Race Discrimination Commissioner has also made a number of submissions to the Government and to parliamentary committees on issues of concern to people from non-English speaking backgrounds.

State of the Nation report 1995 - 20th Anniversary of the Racial Discrimination Act 1975

123. In 1995, the 20th anniversary year of the Racial Discrimination Act provided an opportunity for the third State of the Nation report to evaluate what progress had been made for people of non-English speaking background during those 20 years in the areas of health, justice, policing, education training and employment. The report found that there had been positive developments, particularly in educational curricula, which now generally include diversity and anti-racist activities. In other areas, however, such as employment and health (access to interpreters), progress was slow or non-existent. A number of anti-racism projects funded by the Race Discrimination Commissioner were undertaken during the 20th anniversary year.

Article 2(a)(ii). State government legislative, judicial administrative or other measures against the practice of racial discrimination (see also under article 5 below)

New South Wales

State policy and legal framework

124. In NSW, discrimination on the ground of race is unlawful under the Anti-Discrimination Act 1977. In 1989 the Act was amended to include racial vilification provisions which came into operation on 1 October 1989.

125. In August 1994 several amendments were made to the Anti-Discrimination Act 1977. The Act was amended to enable a complaint of discrimination to be made on behalf of a person by a representative body. The amendment is significant for people who have been racially discriminated against and may not have the English language skills that would enable them to make a complaint on their own behalf.

126. Amendments to the race discrimination provisions extended the definition of race to include "ethno-religion" and "descent". Another amendment to the race provisions was a broadening of the definition of "special measures". An amendment was also made to the racial vilification provisions to increase the maximum penalty for serious racial vilification.

127. The Ethnic Affairs Commission has responsibility for the administration of the Ethnic Affairs Commission Act 1979 as amended. A major amendment to the Act which was enacted in 1997 was the inclusion of four Principles of Cultural Diversity, as follows:

> All individuals in New South Wales should have the greatest possible opportunity to contribute to, and participate in, all aspects of public life.
>
> All individuals and public institutions should respect and accommodate the culture, language and religion of others within an Australian legal and institutional framework where English is the primary language.
>
> All individuals should have the greatest possible opportunity to make use of and participate in relevant activities and programmes provided or administered by the Government of New South Wales.
>
> All public institutions of NSW should recognize the linguistic and cultural assets in the population of NSW as a valuable resource and promote this resource to maximize the development of the state.

128. The Act specifies the need to respect and accommodate culture, language and the religion of others within the Australian institutional framework. As such, it provides, among other things, a foundation for the practical implementation of measures which are designed to ensure that racism is not institutionalized in critical areas, such as the provision of goods and services by NSW public agencies, in a culturally diverse society. The Act also makes chief executive officers of NSW public agencies responsible for the implementation of these principles.

129. The Ethnic Affairs Priorities Statement (EAPS) programme is the main way in which the Principles of Cultural Diversity are implemented. This programme, which was introduced in 1997, requires around 190 NSW public agencies to develop an EAPS plan which demonstrates how the agency is implementing the Principles of Cultural Diversity. Each agency is also required to report on activities undertaken and forward plans under the EAPS programme in their annual reports to Parliament.

Legislative, judicial, administrative and other measures to overcome discrimination

130. One of the most significant judicial decisions that has helped to shape legislative change and policy development is the finding in Phillips v. Aboriginal Legal Service (1993). In this case the Equal Opportunity Tribunal ruled that being Jewish is a racial identity. This was the first time the Tribunal had made a ruling on the issue of ethno-religion. This ruling influenced the 1994 amendment to the definition of race.

131. Another important decision which has had a considerable impact on race discrimination is found in Lamb v. Samuels Real Estate Pty Ltd (1995). This was the first case settled in favour of the complainant in which an Aboriginal person was refused accommodation because of his or her race. The Tribunal found that the employer was responsible for the conduct of the employees and that the employer must have a clear policy about non-discriminatory service and must implement the policy. As a result of this decision the Anti-Discrimination Board

(ADB) worked closely with the NSW Real Estate Institute to develop strategies to eliminate discrimination in the real estate industry. A letting policy was developed for all real estate agents in NSW.

Legislative, judicial, administrative and other measures to eradicate racial hatred

132. During the reporting period two important judicial decisions have helped to eradicate acts of racial hatred. In Wagga Wagga Aboriginal Action Group & Ors v. Eldridge (1995) the Equal Opportunity Tribunal noted that it is not necessary to prove that the person making the vilifying comments intended to incite serious racial contempt. The Tribunal made a finding in favour of the complainants. This was the first complaint of racial vilification to be upheld by the Tribunal. In the second case Patten v. State of NSW (1995) the Tribunal upheld the complaint of discrimination and vilification on the grounds of race. As a result of this finding, a re-investigation of police treatment of Aboriginal people was set up by the NSW Ombudsman.

Equality and full enjoyment of equal treatment before the law including access to public services and public facilities

133. Of particular importance is the provision of interpreting services for court proceedings. To assist in ensuring equality and equal treatment before the law, the NSW Government provides free interpreting services for defendants appearing in criminal court proceedings. As well, people of non-English speaking background who attend Community Legal Centres for advice are entitled to receive free interpreting assistance funded by the NSW Government for initial interviews or where the matter involves NSW law.

134. Access to public services and public facilities is addressed by the EAPS programme described above. Such access is facilitated by NSW government policy that free interpreting services must be provided to all clients of NSW public agencies who do not speak English well or at all. As well, agencies are encouraged to consult with ethnic communities to ensure that their programmes are suitable for, and accessible to, the target group.

135. The Anti-Discrimination Board (ADB) has taken a number of initiatives to improve access to the provisions of the anti-discrimination law for Aboriginal people, Torres Strait Islanders and people from ethnic communities (discussed further below). The key elements of the actions taken to ensure that people from indigenous and ethnic communities have equal access to the provisions of the law are consultations with the communities and their advocates, culturally appropriate information, training and resources, indigenous conciliation officers to handle discrimination complaints of indigenous people, cross-cultural awareness training for all ADB staff, and interpreter services.

Overview of racial discrimination complaint mechanism and procedure

136. Under the Anti-Discrimination Act 1977, complaints of discrimination are investigated to see if what is alleged may amount to a breach of the Act. If there is a breach of the Act, conciliation staff at the ADB attempt to conciliate the complaint. This involves getting all parties to the complaint to come to a confidential agreement or settlement that will resolve the complaint. Settlements may involve an apology, monetary compensation, reinstatement or promotion, provision of goods or services required or a combination of these

remedies. Only a small percentage are referred to the Equal Opportunity Division of the Administrative Decisions Tribunal for a legal determination.

Provision of public information and education campaigns to combat racial discrimination and to promote tolerance and understanding

137. Throughout the reporting period the Anti-Discrimination Board has taken a very active role in publishing information and conducting education campaigns on race discrimination for employers, goods and service providers, registered clubs, educational institutions, community groups and advocacy groups. As a part of its programme to eliminate racial discrimination and vilification the Board runs two important outreach programmes.

138. Through the Aboriginal People and Torres Strait Islanders Outreach Programme, established in 1992, the ADB has developed strong links with the Aboriginal and Torres Strait Islander communities in NSW. The Outreach Programme enables the ADB to provide culturally appropriate services and information resources to the communities on their rights and responsibilities under the law. Consultations and educational sessions are held with the Aboriginal and Torres Strait Islander communities around NSW each year. As a part of the Outreach Programme, the Aboriginal and Torres Strait Islanders Advisory Committee has recently held consultations with key interest groups on two critical areas of discrimination: health service provision to Aboriginal and Torres Strait Islander communities and the treatment of people in these communities by licencees in NSW hotels.

139. One of the achievements of the Aboriginal and Torres Strait Islander Outreach Programme, which provides indigenous conciliation officers to handle discrimination complaints of the Aboriginal and Torres Strait Islanders, has been the significant increase in the number of discrimination complaints received by the ADB from the Aboriginal and Torres Strait Islander communities.

140. The other important outreach programme is the Ethnic Outreach Programme. This programme was set up in 1992 through the ADB's Ethnic Communities Network. It was developed out of concern that many people from ethnic communities were unaware of, or not making full use of, the anti-discrimination law. The Outreach Programme has been used to consult with ethnic community workers, identify the special information needs of various ethnic communities and run rights based training for over 20 different ethnic communities and advocacy groups. The Ethnic Outreach Programme has also developed multilingual factsheets on discrimination.

Queensland

State policy and legal framework

141. The Queensland Ethnic Affairs Policy was adopted in 1992 as a whole-of-government policy with the goal of continuing to build a cohesive and harmonious society. The policy also acknowledged the rights of all individuals to benefit from the resources and opportunities that Queensland has to offer and to contribute to the State's development without prejudice to discrimination.

142. An independent review of ethnic affairs in Queensland was conducted in Queensland in 1996. The Government accepted the bulk of the recommendations of the review and developed a new policy framework called the Queensland Ethnic and

Multicultural Affairs Policy (QEAMAP). QEAMAP placed emphasis on positive community relations and on equitable service delivery. The Queensland Government also established the Office of Ethnic and Multicultural Affairs (EOMA) to coordinate whole-of-government policy development and planning in relation to ethnic and multicultural issues. OEMA replaced the Bureau of Ethnic Affairs. The Ethnic Communities Council of Queensland Limited (ECCQ), the peak body representing ethnic organizations and people in Queensland, which is supported by funding from the Queensland Government, works at enriching the Queensland community through the participation and involvement of people from diverse backgrounds. The ECCQ performs advocacy, representative and consultative functions and, where appropriate, service development and delivery. The ECCQ is particularly active in relation to social justice and human rights issues. The ECCQ promotes joint action and cooperation between ethnic groups/organizations on issues of common concern and ensures effective participation of ethnic communities in matters which affect them. The ECCQ is affiliated with the Federal Communities' Councils of Australia (FECCA) and uses this vehicle to raise issues of national importance to ethnic people.

143. The Queensland Government has an ongoing commitment to the implementation of recommendations of the Royal Commission into Aboriginal Deaths in Custody. Several mechanisms have been established to assist in implementation of the Royal Commission's recommendations, including the Indigenous Advisory Council, which provides advice at ministerial level on a wide range of indigenous issues, as well as overseeing reforms relating to deaths in custody. This is supported by a forum of Chief Executive Officers which promotes improved coordination of indigenous programmes across government.

144. In Queensland, a major initiative arising from the Royal Commission's findings was the establishment, under the Diversion from Custody Programme, of non-custodial facilities as an alternative to police custody for inebriated Aboriginal and Torres Strait Islander people posing a risk to themselves and others. There have been no deaths in police watchhouses in the four centres in Queensland where these facilities have been operating since their introduction. A related initiative involves the resourcing of the Watchhouse Cell Visitors Programme which provides support and counselling to indigenous people in watchhouses.

145. The prevention and elimination of discrimination is an important part of the Queensland industrial relations framework and is recognized as the principle object of the Queensland Workplace Relations Act 1997. Discrimination is described in the Workplace Relations Act as including any grounds of discrimination under the Anti-Discrimination Act 1991. The Workplace Relations Act 1997:

> Requires the Queensland Industrial Relations Commission (QIRC) to take account of the Anti-Discrimination Act 1991 relating to discrimination in employment when exercising its jurisdiction. The current wage-fixing principles of the QIRC require the removal of discriminatory provisions in awards and agreements, as well as the inclusion of a model anti-discrimination clause;
>
> Requires that the effect of a proposed certified workplaces agreement be explained to particular groups of employees in an appropriate way, having regard to their particular needs. Persons from non-English speaking backgrounds comprise one of these groups, ensuring that they can

participate fully in the process of collective bargaining without disadvantage. In addition, the QIRC must refuse to certify an agreement if it considers the agreement contains a discriminatory provision;

Requires Queensland Workplace Agreements (QWAs) to be approved by the Enterprise Commissioner. The Employment Advocate has the responsibility of investigating and remedying alleged contraventions of QWAs. When exercising these functions, the Employment Advocate must have regard to the needs of workers in disadvantaged bargaining positions including people from non-English speaking backgrounds.

146. The Queensland Aboriginal Land Act 1991 and the Torres Strait Islander Land Act 1991 came into effect on 12 June 1991. The Acts provide two processes by which indigenous people may obtain ownership of land - the transfer process and the claims process. Under the transfer process, existing Aboriginal and Torres Islander deeds of grant in trust and reserves can be transferred to indigenous people without a claim being made. To date, 58 parcels of land comprising an area of approximately 154,674 hectares have been transferred. A further 1.2 million hectares of land is presently in the process of being investigated for transfer. Under the claims process, claims can only be made over national parks and unallocated State land that have been declared by regulation to be available for claim. To date approximately 2,787,657 hectares have been declared available. Approximately 2.7 million hectares of this land has been claimed.

147. Queensland's Local Justice Initiatives Programme supports community developed initiatives such as Community Justice Groups of elders which undertake crime prevention tasks with their communities, particularly the youth. The programme has achieved some success in reducing the incidence of indigenous juvenile offenders appearing before the courts and in promoting the use of non-custodial sentences for offenders supported by their community in this way.

148. The Queensland Aboriginal and Torres Strait Islander Economic Development Strategy launched in 1998 has been developed to provide a framework for fostering business growth and sustainable employment opportunities for Aboriginal and Torres Strait Islander Queenslanders and providing greater coordination and integration of economic development support programmes.

Legislative, judicial, administrative and other measures to overcome discrimination

149. The Queensland Anti-Discrimination Act 1991 makes unlawful, among other things, discrimination on the basis of race or association with a person identified on the basis of race, in the areas of work, provision of education, goods and services, superannuation and insurance, accommodation, dispositions of land, club membership, administration of state laws and programmes and the local government area. "Race" is defined very broadly under the Act and specifically includes colour, descent or ancestry, ethnicity or ethnic origin and nationality or national origin. Both direct or indirect discrimination are prohibited.

150. The Act covers not only discrimination against an individual because of his or her race, but also discrimination against an individual because of the race of a person with whom the individual is associated. Thus, for example, if a person in the company of an indigenous Australian is refused entry to premises

for no apparent reason, not only the indigenous Australian but also the companion will have a right of action.

151. One in five complaints of discrimination lodged with Queensland's Anti-Discrimination Commission involve allegations of race discrimination, with the work area being the main area of activity of complaints (around 65 per cent of all complaints of discrimination relate to the work area). The definition of work under the Act is very broad. It covers not treatment whilst in employment, but also the antecedence to becoming employed - that is to say treatment throughout the recruitment process. Moreover, work includes full time, part time, casual, permanent and temporary employment, work under a contract for services, commission work, work under a statutory appointment, vocational training and work experience, work on a voluntary or unpaid basis, work in a sheltered workshop and work under a guidance programme, apprenticeship training programme or other occupational training or re-training.

152. The Act includes certain exemptions for positive measures to promote diversity. For example, there are exemptions for excluding access to sites of religious or cultural significance by people who are not of a particular race, age or sex. Similarly, there is a general exemption for "welfare measures" and "equal opportunity measures".

153. The Anti-Discrimination Act 1991 additionally contains provisions which promote diversity and prohibit race discrimination.

Section 126 creates a criminal offence for the incitement of religious or racial hatred. It creates a criminal offence for any person who, by advocating racial or religious hatred or hostility , incites unlawful discrimination or another contravention of the Act.

Another provision which promotes non-discriminatory work practices is the imposition of vicarious liability on employers through section 133. That section imposes upon employers a positive obligation to ensure that they inculcate a discrimination-free work environment. If employers are unable to discharge their statutory obligation by demonstrating that they took reasonable steps to prevent discrimination in the workplace, then they can be held jointly and severally liable for the breach. This provision encourages employers to take responsibility for the workplace culture they permit.

Provisions such as section 124 (Unnecessary Information) and section 127 on (Discriminatory Advertising) promote non-discriminatory recruitment and selection practices. Penalties can apply to discriminatory advertisements.

<u>Equality and full employment of equal treatment before the law including access to public services and public facilities</u>

154. The Alternative Governing Structures Programme was established in 1995 to resource indigenous communities to undertake community planning processes and develop more appropriate decision-making structures, including potential changes to the system of local government operating in Deed of Grant-in-Trust communities.

155. The programme seeks to enhance opportunities for meaningful and effective self-government by indigenous communities, consistent with their assuming

increasing autonomy in regulating their affairs. To date, 11 indigenous communities have been resourced to conduct community-based planning on a range of matters relevant to the development of more effective decision making structures. An Alcohol Law Council of Elders has been established at Aurukun and has been given legislative backing to determine the availability and consumption of alcohol in that community.

156. The Queensland Government, through the Office of Ethnic and Multicultural Affairs, established a pilot Community Relations Project in partnership with local governments. The project aimed to develop models for the management of community relations issues at the local level and was piloted with the Gold Coast and Ipswich City Councils. As a result of the pilot, the Queensland Government issued The Community Relations Manual: A Guide for Local Government.

157. The Equal Opportunity in Employment Act 1992 (EOPE Act) promotes equal opportunity in the public sector for members of target groups, including Aboriginal and Torres Strait Islander people and people from non-English speaking backgrounds. Queensland government departments have a range of equity and equal employment opportunity (EEO) programmes which encourage the development of programmes of support for these people.

158. The Department of Training and Industrial Relations has responsibility for two programmes that recognize the need to provide opportunities and awareness/education about indigenous Australians. The Aborigines and Torres Strait Islanders Middle Management Training and Development Programme is a 12-month development programme designed to enhance the career opportunities of Aboriginal and Torres Strait Islander employees in the Queensland public service. It commenced in 1993. Mura Ama Wakaana is an indigenous-specific cultural awareness training package for the Queensland public sector. It has been developed in consultation with representatives of Aboriginal communities and public sector agencies across Queensland. The programme provides a broad introduction to issues when working in a cross-cultural setting with Aboriginal and Torres Strait Islander people. Training is delivered by indigenous people and covers areas such as Aboriginal and Torres Strait Islander experiences, communicating relationships, working in local communities and working together.

159. The issues of indigenous people were also integrated in the review of the Queensland Vocational Education Training and Employment Commission's (VETEC) Social Justice Strategy and in the development and endorsement of an Access and Equity Policy for the vocational education and training sector in 1998. This ensured that the vocational education and training services and programmes provided within Queensland are relevant and responsive to the needs of all Queenslanders.

160. The Department also continues to support the Aboriginal and Torres Strait Islander Standing Committee (Nagi Binanga) established by VETEC in 1992. Nagi Binanga advises VETEC on strategic and policy matters affecting the participation of Aboriginal and Torres Strait Islander people in VET programmes. The Nagi Binanga Strategic Plan 1998-2000 was developed to give focus and direction to the advice provided by Nagi Binanga to VETEC each year for planning and resource allocation purposes. In keeping with the provision of a structured framework for the provision of vocational education and training to the Aboriginal and Torres Strait Islander peoples of Queensland, the 1999 Indigenous Training Plan was submitted to VETEC for integration into the annual VET Plan.

161. In Queensland, a Land and Natural Resource Management Programme provides assistance to Aboriginal and Torres Strait Islander organizations to increase their capacity to solely or jointly manage land or natural resources of which they have ownership or management in a manner which best maximizes the social, cultural or economic benefits by:

Assisting in the development of a management control plan for land or a natural resource in an area of which they have ownership or management or with which they possess a traditional or historical relationship; or

Assisting in negotiating sole or joint management rights to land or a natural resource; or

Assisting in negotiating compensation for use of land or a natural resource.

162. The Outstation Development Programme assists Aboriginal and Torres Strait Islander people who choose to do so, to move back to land of social, cultural or economic significance to them by providing funding to meet the costs of basic infrastructure and services not normally provided through other Queensland government departments or agencies. This land may be transferred to Indigenous control under Queensland's land rights legislation, purchased by the Indigenous Land Corporation or provided as Deed of Grant in Trust.

Overview of racial discrimination complaint mechanism and procedure

163. Until December 1996, the Anti-Discrimination Act was administered by the Commonwealth Human Rights and Equal Opportunity Commission (HREOC) on an agency basis on behalf of the State of Queensland pursuant to an inter-governmental arrangement. The agreement lapsed in December 1996 and a new state based and funded commission was established with an enhanced regional presence. Offices are now fully operational in Brisbane, Cairns, Townsville and Rockhampton (the former HREOC presence in Queensland only had offices in Brisbane, Cairns and Rockhampton).

164. The Commission has two key functions under the Act. First, it is the forum through which complaints of race discrimination are lodged. Secondly, it has overriding statutory duty to promote the acceptance and discussion of human rights in the states. It is this latter statutory duty that provides the mandate for the Commission to embark on educative initiatives, training programmes and making commentary on issues generally.

Provision of public information and education campaigns to combat racial discrimination and to promote tolerance and understanding

165. Education Queensland has developed and anti-racism policy for students and employees in Queensland state schools to increase their awareness of the issues of racism and how to deal with them. The policy requires principals and managers to develop and implement procedures that ensure all staff and students are aware of their rights and responsibilities in relation to the anti-racism policy. The policy grew out of trials conducted during 1996/97 in a range of educational districts throughout the state. A resource package Under the Skin: Combating Racism in Queensland Schools has been developed to assist schools in the implementation of this policy.

166. The Anti-Discrimination Commission Queensland is involved in a range of activities to promote an inclusive society, including the launch of a new race discrimination poster, participation in Refugee Week and active research into the translation needs for the Commission's educational publications. Additionally, the Commission has given a commitment to undertake one major research project each year. This year's project relates to racism in schools. A budgetary allocation has been assigned for the conduct of this research project.

## Western Australia

### State policy and legal framework

167. There are a number of policies developed and implemented by the Office of Multicultural Interests (OMI), the Department of Aboriginal Affairs (DAA) and the Commissioner for Equal Opportunity (CEO). Major initiatives to combat racism at the state level by these organizations include:

Review of the scope and incidence of racism in five different workplaces. Based on the findings a kit on how to develop guidelines to identify and deal with racism has been developed;

Review has commenced of Aboriginal complainants, to ascertain why their rate of lapsed complaints is higher than that of other categories of people who lodge complaints;

Policy advice, monitoring the impact of government policies and programmes on people from diverse cultural, linguistic and religious backgrounds, and liaising with a wide range of individuals, government and community organizations;

Migrant Services Directory - informs people of their rights and gives names and telephone numbers of relevant agencies;

Working with appropriate state/Commonwealth government agencies to promote a harmonious community and equitable access to community resources for Western Australians of diverse cultural, linguistic and religious backgrounds;

Jointly sponsoring with the Commonwealth Translating and Interpreting Service (TIS) a training session for state public sector employees to learn how to work more effectively with interpreters;

Working with the Western Australian Police Service and non-government agencies to organize and hold a two-day residential seminar/camp to foster better relations between ethnic youth and the police;

Joint venture with Adult Migrant Education Service to produce a migrant services guide to facilitate access between ethnic community and Commonwealth/state government and non-government service providers;

Working with members of ethnic communities, government departments and community organizations to develop a strategy to promote community harmony;

A Community Relations Strategy Committee, comprised of representatives of the ethnic community, relevant government departments and non-government service providers was convened by the Office in December 1995 to develop a community relations strategy as part of Western Australia's multicultural policy - WA ONE.

168. The Aboriginal Affairs Legislative Review Reference Group (LRRG) concept paper, Provision of Services to Aboriginal People in Western Australia, proposes an action plan for a whole-of-government approach and will form the basis for new legislation on Aboriginal affairs.

169. The strengthening of culture among the Aboriginal people is viewed as a major strategy in reducing conflict with the justice system and to improve social and health outcomes. The establishment of the Commission of Elders recognizes the status of elders in the Aboriginal community as a source of strength to be utilized in making more effective government decisions concerning Aboriginal affairs.

170. Aboriginal participation in decision-making processes is achieved by:

Providing secretariat and policy support to the Aboriginal Justice Council and establishing and providing support to seven regional Aboriginal Justice Councils;

Assisting eight remote communities in increasing the effectiveness of the by-laws scheme under the Aboriginal Communities Act;

Supporting Aboriginal communities in improving the operations and effectiveness of 11 community patrols; and

Promoting the status and role of the Commission of Elders through state and regional meetings and facilitating their direct discussion of key issues with government.

171. Aboriginal activities are monitored by:

Negotiating a Monitoring Action Plan with state agencies including more outcomes focused reporting on the implementation of the Royal Commission into Aboriginal Deaths in Custody recommendations;

Improving the monitoring of outcomes of government activity in the regions through the establishment of regional Aboriginal Justice Councils and the development of social and environmental health indicators for remote communities;

Progressing the establishment of benchmark standards for services to Aboriginal communities, specifically on Aboriginal student participation in education; and

Production and distribution of information bulletins derived from the Aboriginal specific database.

Legislative measures - anti-discrimination legislation

172. The Western Australian Equal Opportunity Act 1984 (amended 1988 and 1992) makes discrimination on the grounds of race discrimination and racial harassment unlawful.

173. Race is defined as including colour, descent, ethnic or national origin or nationality. The fact that a race may comprise two or more distinct races does not prevent it being a race for the purposes of the Act. Areas of public life covered are employment, education, accommodation, provision of goods, services and facilities, membership of clubs, access to places and vehicles, application forms, advertisements, and superannuation and insurance.

Overview of racial discrimination complaint mechanism

174. The processes by which people may lodge complaints of race discrimination and racial harassment are the same as processes in relation to other grounds of discrimination such as sex, sexual harassment, family responsibilities and age. In Western Australia, under a cooperative agreement with the Commonwealth, the Commissioner handles enquiries and complaints lodged under the Commonwealth Racial Discrimination Act 1975.

175. The powers and functions of the Western Australian Commissioner for Equal Opportunity are stipulated in Part VII of the Equal Opportunity Act 1984 (WA). Briefly, the Commissioner is required under section 84 to investigate each complaint lodged by individuals who allege unlawful discrimination. The Commissioner is required also to investigate complaints lodged by a trade union on behalf of a member or members.

176. Under section 94, the Commissioner delegates specific powers in relation to the processes of investigation and conciliation to Conciliation Officers. With respect to these processes, powers conferred upon the Commissioner include the right to obtain pertinent information and documents (sect. 86) and to convene a compulsory conference (sects. 87 and 91).

177. Section 93 (2) of the Act provides that where the Commissioner is of the opinion that a complaint cannot be conciliated and refers it to the Tribunal, then the Commissioner shall provide assistance to present the complaint to the Equal Opportunity Tribunal, if requested to do so by the complainant.

Provision of public information and campaigns to combat racial discrimination and to promote tolerance and understanding

178. Activities to promote awareness of the race provisions of the Equal Opportunities Act 1984 and to promote tolerance and understanding include:

Information briefs on race discrimination and racial harassment;

An Aboriginal calendar (depicting either an Aboriginal drawing or situations typically confronted by Aboriginal people), which is disseminated across the state;

Announcements on Information Radio - 990AM about equal opportunity and the Commissioner's services;

A guide to the Act in plain English for Aboriginal people;

A community workers' forum to assist community workers understand discrimination; it specifically targets workers working with people from linguistically and culturally diverse backgrounds;

A widely disseminated quarterly newsletter on discrimination matters; it includes summaries of decisions of tribunals and courts, and the outcomes of conciliated complaints;

Out-reach in regional areas to inform people about equal opportunity and discrimination issues;

Training employers, human resource practitioners and employees on the provisions of the Act and on how to develop policies that are non-discriminatory.

179. Activities to promote tolerance and understanding in relation to Aboriginal people comprise an explicit acceptance of enabling Aboriginal people to have access to their past. Public information initiatives in this arena include improved library, archival, family and community history and site register services to clients through the development of a clear "access to information" policy; producing videos and pamphlets as part of an awareness package on family and community history; providing library access to regional offices through CD ROM and the Internet; and providing training in all regions on providing a family history service.

180. Another public information initiative is the improvement of communication with Aboriginal people about land title and land use matters by:

Developing culturally accessible information packages on land matters ready for distribution;

Conducting forums for Aboriginal people experienced in dealing with land use issues in the South West and West Kimberley regions;

Providing information and education about land programmes and services as part of the Memorandum of Understanding with the Department of Land Administration; and

Implementing a joint Commonwealth/state training programme on essential services.

181. Increased community awareness and understanding of traditional and contemporary Aboriginal culture was achieved by:

Developing and presenting to the public the interactive "Time Tunnel" experience on Aboriginal history, culture, current issues and achievements;

Developing and preparing for presentation media awards which will encourage positive and informed debate on Aboriginal issues; and

Providing an Aboriginal focus at events such as the Perth Royal Show, Mining and Energy Week, the Pacific School Games, NAIDOC (National Aboriginal and Islander) Week and the 1997 Festival of Perth.

182. Aboriginal communities were assisted in promoting Aboriginal culture and art by:

Developing a policy paper on Aboriginal culture and arts for state cabinet consideration;

Conducting regional workshops for Aboriginal communities on the roles of state agencies in the arts, language and cultural tourism; and

Contributing to the development of a national Aboriginal tourism strategy.

South Australia

State policy and legal framework

183. The South Australian Government seeks to prevent and eliminate racism and discrimination and to overcome potential barriers to ensure equitable access to public sector services, education and employment opportunities. The Government's approach is underpinned by equal opportunity and racial vilification legislation and government policies aimed at ensuring all South Australians have the same opportunities for advancement, security and reward regardless of sex, race, colour or religion.

184. The Government has expressed its firm resolve to resist racist forces, to prevent the spread of racist sentiment or behaviour in the community and to affirm its support for multiculturalism and the benefits of cultural diversity.

185. The Strategic Plan for Multicultural South Australia 1996-1999 was launched in December 1996 and reflects the South Australian Government's commitment to a productive, fair and cohesive community where cultural, linguistic and religious diversity is supported and valued. The Plan identifies key result areas of: social cohesion, economic development, social justice, cultural identity and consultation and acknowledges the right of all South Australians to express and share their cultural heritages within the state's legal and social framework.

186. The Commissioner for Equal Opportunity is responsible for the administration of the Equal Opportunity Act and has statutory functions including to:

Foster and encourage informed and unprejudiced attitudes with a view to eliminating unlawful discrimination; and

Investigate and make all reasonable attempts to resolve complaints of unlawful discrimination by conciliation.

187. The Division of State Aboriginal Affairs in the Department of Environment, Heritage and Aboriginal Affairs (DOSAA) (formerly the Department of State Aboriginal Affairs) seeks to achieve improved levels of cooperation and provide a focus for the coordination of state government services to Aboriginal people. One of its objectives is to provide policy advice in the coordination and

delivery of services and promote equality of opportunity by working to eliminate barriers such as discrimination and prejudice.

188. The South Australian Multicultural and Ethnic Affairs Commission is established under the South Australian Multicultural and Ethnic Affairs Commission Act 1980 (as amended). Under this Act, the primary functions of the Commission are to:

> Increase awareness and understanding of the ethnic diversity of the South Australian community and the implications of that diversity and;
>
> Advise the Government and public authorities on, and assist them in, all matters relating to the advancement of multiculturalism and ethnic affairs.

189. The Office of Multicultural and International Affairs is an administrative unit under the Public Sector Management Act 1995. The objectives of the Office are to:

> Advise the Minister and the Government on matters relating to multiculturalism, ethnic affairs, immigration and broad international issues;
>
> Develop, implement and coordinate policies and programmes relating to the promotion and advancement of multiculturalism;
>
> Promote South Australia as a migration destination;
>
> Promote multicultural affairs, policies and practices in other government agencies, including the provision of advice to agencies on the implementation of the Access and Equity Strategy, cross-cultural training, use of interpreting and translating services, and other services, as required;
>
> Facilitate communication between government and ethnic community groups;
>
> Promote the economic, social and cultural benefits of multiculturalism for all South Australians;
>
> Provide administrative support to the South Australian Multicultural and Ethnic Affairs Commission.

<u>Legislative, judicial, administrative and other measures to overcome discrimination</u>

190. The main legislative provisions aimed at overcoming discrimination are contained in the Equal Opportunity Act. Sections 51 to 63 of the Act prohibit discrimination on the ground of race in the areas of employment, qualifying bodies, clubs and associations, educational authorities land, accommodation and the provision of goods and services.

191. Some other pieces of legislation reinforce this general prohibition against discrimination. For example, section 7 of the Childrens Services Act 1985 clearly states that the objects of the Minister, any committees and any person acting under the Act are to encourage the provision of children's

services that do not discriminate against or in favour of any person on the ground of religion, race or nationality, except so far as it is necessary to do so for the purpose of assisting a child to overcome any disadvantage arising out of his (or her) religion, race or nationality; and to ensure that the multicultural and multilingual nature of the community is reflected in the planning, implementation and structure of programmes and services for children and their families.

192. Section 5 of the Public Sector Management Act 1995 provides that public sector agencies will "prevent discrimination against employees seeking employment in the public sector on the ground of race, and ensure that no form of unjustifiable discrimination is exercised against employees seeking employment".

193. Section 4 of the Office of the Aging Act 1995 provides that an objective of the office is to ensure that the multicultural nature of the community is reflected in the planning and implementation of programmes and services for the aging or affecting the aging.

194. In May 1997, the Parliament passed a motion calling for reconciliation and apologizing for the stolen generation. The motion was passed with bipartisan support and provided:

> "That the South Australian Parliament expresses its deep and sincere regret at the forced separation of some Aboriginal children from their families and home which occurred prior to 1964, apologises to these Aboriginal people for these past actions and reaffirms its support for reconciliation between all Australians."

195. The Aboriginal Justice Advocacy Committee (AJAC) is an independent forum to monitor government implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody. The Committee involves the Aboriginal community in the monitoring of the implementation of the recommendations, which advocate for social justice, criminal justice and human rights for and on behalf of Indigenous people of South Australia, ensuring equitable/quality outcomes.

196. In addition, the Government has established the Aboriginal Justice Interdepartmental Committee to monitor the state's implementation of the recommendations of the National Report into Aboriginal Deaths in Custody and respond to issues raised by AJAC. The Committee has established working groups to focus on issues such as policing, non custodial sentencing options and issues for Aboriginal youth.

Legislative, judicial, administrative and other measures to eradicate racial hatred

197. Throughout the reporting period, South Australia has adopted measures aimed at anti-racial vilification and anti- racist activities.

198. In 1994, the Legislative Council passed a motion condemning the racist activities of certain elements in the community and calling on South Australians to join in the condemnation of racism in their society.

199. In 1995, a community relations forum was organized on the topic of racial vilification.

200. In 1996, the Racial Vilification Act was enacted. The Racial Vilification Act creates the offence of racial vilification. The offence requires that the act of vilification include a serious threat to a person or property. The Act refers to vilification as inciting "hatred towards, serious contempt for, or severe ridicule of a person or group of persons on the ground of their race". Only public acts are covered. Criminal sanctions are provided on the basis that individuals or groups that promote racial violence or threats of violence are beyond the reach of effective conciliation and education.

201. The Act empowers a court by which a person is convicted of an offence against the Act to award damages (including punitive damages) against the convicted person. The Act also creates a new civil remedy, which will enable a person who suffers a detriment in consequence of racial victimization to sue in the courts for damages. This is done by creating a new sort of victimization. "Detriment" includes distress in the nature of intimidation, harassment or humiliation.

202. Racial discrimination and harassment have been identified by some ethnic communities as a major issue to be addressed. Therefore, the Government has established a collaborative anti -racism project. The project is aimed at empowering South Australians most at risk of being harassed or discriminated against because of their race, colour, descent or national or ethnic origin, with information about their rights. The strategies include:

Ensuring newly arrived migrants are aware of anti -racism laws and how to exercise their rights under the legislation;

Training ethnic communities to identify unlawful racial discrimination and harassment and to know how to exercise these rights; and

Broadcasting and publication of information rights in relation to anti-racism.

203. In addition, the Office for Multicultural and International Affairs works closely with community organizations and government agencies to minimize the incidence of racist behaviour and to strengthen an understanding of the legislation relating to racism. The Office works collaboratively with government and non-government agencies and peak community organizations towards developing a state-wide package of anti-racism initiatives.

204. The Government, through the Education Department's anti-racist curricula, is also seeking to increase the awareness of anti-discrimination and harassment legislation among state school students. An anti-racism curriculum has been developed for students in years 6 to 10.

205. Some local Crime Prevention Committees have identified racism as an issue for their communities. As a result, they have developed programmes aimed at anti-racism issues such as racial vilification in schools, identifying the extent of racism for young people, developing a racism resource for young people and encouraging greater tolerance and appreciation of cultural diversity.

Equality and full enjoyment of equal treatment before the law including access to public services and public facilities

206. The Division of State Aboriginal Affairs provides a focus for the coordination of state government services to Aboriginal people. It monitors the outcomes of state government services and programmes to Aboriginal people and provides advice to the Minister.

207. The Multi Agency Resocialisation Approach has recently been developed by the Aboriginal Prisoners and Offenders Support Service. The aim is to provide a coordinated approach to service delivery to the Aboriginal community across government and community based organizations. Its ultimate goal is to redress the underlying and fundamental cause of indigenous people's inequality and disadvantage. Originally, the programme was to target pre-released Aboriginal prisoners, their families and communities in order to reduce the incidence of recidivism and reimprisonment. However, the programme is still evolving and may now be developed into a model for broader application.

208. The Declaration of Principles for a Multicultural South Australia was launched in December 1995 and underpins the policies, practices and activities of all state government agencies in South Australia. Agencies are expected to demonstrate a commitment to the principles of the Declaration and to ensure that cultural and linguistic diversity is an integral part of management practices, policies and services. The Declaration has been translated into 14 languages and distributed to community groups.

209. The Government has been undertaking an evaluation of access and equity across the public sector. In 1996, at the request of the Premier, the South Australian Multicultural and Ethnic Affairs Commission undertook an evaluation of access and equity across the South Australian public sector. The evaluation was undertaken to determine the extent to which all South Australians can access programmes and services with equal ease irrespective of their first language or cultural, racial or religious backgrounds. The evaluation gathered information from over 50 consultations across metropolitan, regional and country areas of South Australia. The South Australian Government is developing strategies to ensure that the range of services offered by state public sector agencies are available, accessible and equitable for those who may encounter disadvantage on the basis of their language, culture, race or religion.

210. In March 1997, the Office of Multicultural and International Affairs held a forum, "Equal access to government agencies for women of diverse cultural and linguistic backgrounds: is there room for improvement?" The forum provided an opportunity for women of diverse cultural and linguistic backgrounds to identify the success or failure of access and equity policies in meeting their needs.

211. Cultural awareness programmes have also been undertaken in a number of government departments so that employees are aware of cultural issues in delivering quality services. Different programmes have been tailored for achieving excellence in cross-cultural customer service and managing cultural diversity. In addition, cultural awareness programmes have been conducted for the judiciary, aimed at increasing judicial officers' sensitivity to Aboriginal issues in the way they receive evidence from Aboriginal defendants and consider non-custodial options in the sentencing process.

Overview of racial discrimination complaint mechanisms and procedure

212. The Equal Opportunities Act provides that it is unlawful to discriminate on the ground of race in certain circumstances. Race is defined to mean nationality, country of origin, colour or ancestry of the person or of any person with whom he or she resides or associates. When a matter is referred to the Equal Opportunity Tribunal, the Tribunal hears arguments and evidence and makes a decision as to whether the complaint is substantiated or should be dismissed. If the Tribunal decides the complaint has substance, it will determine an appropriate resolution.

213. During the reporting period, there have been no significant changes to the complaint mechanism, as set out under the Act. However, there has been an internal review of the complaint handling process within the Office of the Commissioner for Equal Opportunity. This review was established to deal with a backlog of complaints and excessive delays. The new process involves greater intervention and direction by senior management in the early stages of complaint handling, fortnightly reviews of all cases held by conciliation officers and greater emphasis and stricter control on time allocated to both complainants and respondents to engage with the process of resolution.

214. Some of the benefits of the changes will be:

Assurance that complainants and respondents are treated without favour or bias;

A more streamlined referral and decision-making process allowing complaints to be resolved quickly and efficiently;

Earlier referral to the Tribunal; and

Closer integration of conciliation with training and education functions.

215. In 1996-97, the Commissioner for Equal Opportunity received 617 complaints. Of these complaints, 19 per cent alleged discrimination on the ground of race. Of the racial discrimination complaints received, 43 per cent were in the area of employment and 35 per cent related to goods and services.

Provision of public information and education campaigns to combat racial discrimination and to promote tolerance and understanding

216. Throughout the reporting period, the Government has conducted or sponsored numerous information and education campaigns to combat racial discrimination and promote tolerance and understanding. These campaigns are part of the statutory functions of the Commissioner for Equal Opportunity and the South Australian Multicultural and Ethnic Affairs Commission.

217. The Commissioner for Equal Opportunity has general publications on the issue of racial discrimination. The Office conducts community education and has also prepared a training kit, Race Discrimination Legislation: Implications for the Workplace.

218. Targeted community education services have been provided to Aboriginal, Torres Strait Islander, Cambodian and Spanish-speaking communities to ensure that the targeted communities have access to information about their rights and

responsibilities under the Equal Opportunity Act and are able to act on their rights. Strategies include the production and distribution of appropriate educational resources, running training courses and presentations on anti-discrimination law, broadcasting information through media and active participation networks. The targeted communities are increasingly accessing information about anti-discrimination laws and services through networks of trained community contact people.

219. The South Australian Multicultural and Ethnic Affairs Commission holds regular multicultural forums to foster cross-cultural understanding and strengthen and broaden understanding of the benefits associated with cultural and linguistic diversity in society.

Victoria

Legislative measures to overcome discrimination

220. In 1993, the Victorian Parliamentary Scrutiny of Acts and Regulations Committee (SARC) undertook a comprehensive review of the Equal Opportunity Act 1984 and made numerous recommendations for substantial changes and improvements to this Act. In 1995, a new Equal Opportunity Act was passed which repealed and replaced the 1984 Act. The Equal Opportunity Act 1995 ("the Act") while retaining all the grounds of prohibited discrimination in the 1984 Act, including race, also introduced new grounds of discrimination.

221. The Act prohibits discrimination on the ground of race in specified areas of public life including in employment and employment-related areas, in education, in the provision of goods and services and in accommodation. There are a limited number of exemptions in the Act.

222. The Act is administered by the Equal Opportunity Commission of Victoria ("the Commission"). The Commission receives complaints lodged under the Act and attempts to conciliate such complaints. Where conciliation is unsuccessful, a complainant can have the matter referred to the Anti-Discrimination Tribunal for resolution. The Commission also has an educative and research function and is required by the Act to disseminate information for the education of the public with respect to the elimination of discrimination and the promotion of equality of opportunity.

223. In 1996-97, the Commission appointed an Ethnic Outreach Coordinator and set up an Ethnic Outreach Programme to provide educational and information services and resources to people from non-English speaking backgrounds. In 1997, the Commission also played a key role in organizing a rally entitled "Take a stand against racism" which attracted over 40,000 Victorians.

224. The Act requires the Minister responsible for the Act (the Victorian Attorney-General) to cause a review of all Victorian legislation for the purpose of identifying provisions which discriminate or may lead to discrimination against any person. The Commission is currently undertaking this review on behalf of the Attorney-General.

Other measures to overcome discrimination

225. In February 1998, the Victorian Department of Education released a draft counter-racism strategy for consultation. Components of the draft strategy

include a counter-racism policy, grievance procedures, curriculum guidelines and materials, good practice materials, programmes for school students, professional development and evaluation. The strategy is expected to be finalized in mid-1998 for implementation in late 1998.

226. The Postcard Campaign engaged year 10 and 11 students in discussions about the values of diversity and tolerance in Australian society. It was based around two postcards featuring images which represent aspects of Victoria's cultural diversity. Students were asked to think about the postcard images and complete the phrases "If I could make a difference I'd..." and "Being Australian means...". Over 7,100 students responded and awards have been presented.

227. The aim of the Multicultural Policy is to ensure that by 2006 all students from primary to year 12 will have multicultural perspectives delivered across all key learning areas and incorporated into all aspects of school life. Work has already commenced on various strategies to implement the policy.

228. A Nation of Immigrants: A State of Diversity facts file kit provides facts and figures on the impact of migration on Australia and Victoria and the benefits of cultural diversity. The material has been designed for use by a wide audience, including primary and secondary schools.

229. The Victorian Ethnic Affairs Commission was established by the Ethnic Affairs Commission Act, which was assented to on 25 May 1983. In March 1996, the Commission's name was changed to the Victorian Multicultural Commission. The objectives of the Commission are to:

Promote full participation by Victoria's ethnic groups in the social, economic, cultural and political life of the Victorian community;

Promote access by Victoria's ethnic groups to services made available by government and other bodies;

Encourage all of Victoria's ethnic groups to retain and express their social identity and cultural inheritance;

Promote cooperation between bodies concerned with ethnic affairs;

Promote unity among Victoria's ethnic groups;

Promote a better understanding of Victoria's ethnic groups within the Victorian community.

Australian Capital Territory

230. The ACT Public Service Standards stipulate that customers are not disadvantaged from receiving government services because of race, religion or background. These standards are based on a legal framework supported by appeals and reviews processes. Since Australia's last report to CERD the ACT Government has moved to strengthen this framework by enacting the Public Sector Management Act (1994) and the Discrimination Act (1991).

Measures to overcome discrimination

231. The ACT Discrimination Act 1991 came into force on 20 January 1992. The Act makes discrimination on the basis of 11 grounds, including race, unlawful in such areas as employment, education, access to premises, education, goods, services and facilities and clubs. The Act defines "race" as including:

> Colour, descent, ethnic and national origin and nationality; and
>
> Any two or more distinct races which are collectively referred to or known as a race.

232. The Chief Minister's Multicultural Consultative Council, the Ethnic Communities Council of the ACT and the Migrant Resource Centre of Canberra and Queanbeyan, through the Joint Consultation Programme, are instrumental in recommending strategies to the ACT Government on overcoming discrimination and ensuring equity in accessing services. Concerns raised by Canberra's ethnic communities through these forums have been dealt with by the ACT government departments and agencies.

233. The ACT has taken several initiatives in the justice system to address the needs of Aboriginal and Torres Strait Islander Australians including the following:

> In accordance with a recommendation of the Royal Commission into Aboriginal Deaths in Custody, the ACT has almost completed the process of establishing the ACT Aboriginal Justice Advisory Committee (AJAC). Within this framework, Aboriginal justice issues would be addressed primarily through the development of a Justice Strategic Plan. The AJAC will monitor the full range of criminal justice and law enforcement-related issues which affect the local Indigenous community and which will inform the development of the Justice Strategic Plan. These issues will include police-indigenous relations, custodial care of Indigenous people, Indigenous young people in the criminal justice system, pre- and post court diversion, and legislative reform.
>
> The role of the AJAC has been partly fulfilled by the Deaths in Custody Working Party, a sub-committee of the Aboriginal and Torres Strait Islander Consultative Council.
>
> The requirement under the Commonwealth Crimes Act 1914 that all Aboriginal people taken into custody by the Australian Federal Police (AFP) for indictable offences must be accompanied by a "friend" during interview/questioning, has been extended by the ACT regional AFP to all offences involving Aboriginal people. In keeping with this requirement, $75 000 was allocated in the 1997-98 ACT budget to establish a roster of volunteers from the Aboriginal community to undertake this function.

Measures to eradicate racial hatred

234. The ACT Discrimination Act 1991 makes racial vilification unlawful and subject to civil remedies, whilst making serious racial vilification (which involves incitement to physical harm towards people or property) a criminal offence. Under the Act, racial vilification is a "public act, to incite hatred

towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group.

235. In October - November 1996, the ACT Government instituted a number of anti-racism measures including the following:

The ACT Legislative Assembly unanimously passed a Chief Minister's motion that supported Aboriginal reconciliation and multiculturalism and denounced all forms of racial intolerance;

Implementation of the ACT Department of Education's Anti-Racism Policy, which commenced in the 1997 school year. This included the appointment of anti-racism contact officers for students in every Canberra school, and staff of the Department;

Introduction of a Hotline Card in June 1997 to allow quick reporting of racist incidents. The Hotline Card contains contact details of key community leaders, the ACT Human Rights Office, the Australian Federal Police and the Office of Multicultural and International Affairs. It is issued in the Arabic, Chinese, Hebrew and Vietnamese languages.

Counselling services offered by ACT government departments and agencies have been coordinated to provide prompt support to victims of racial abuse or discrimination; and

When necessary the ACT Government, through the Office of Multicultural and International Affairs, provides support to help ethnic community organizations deal with potentially discriminatory issues.

236. The ACT Department of Education & Training and Children's, Youth and Family Services Bureau has an Aboriginal and Torres Strait Islander education policy, which requires that every ACT government school has an Aboriginal contact teacher for students.

237. ACT government schools are expected to combat racism through the curriculum by implementing the Aboriginal and Torres Strait Islander, and Multicultural Education Across Curriculum Perspectives. These perspectives promote the teaching of diverse cultural viewpoints, knowledge and skills across all curriculum areas.

Measures to ensure equal treatment before the law, including access to public services and facilities

238. The ACT Discrimination Act 1991 makes discrimination unlawful in the provision (whether for payment or not) of goods, services and facilities.

239. In respect of the ACT Government as an employer, any staff member who considers he/she has been the recipient of discrimination, harassment or racial vilification has a number of avenues both formal and informal that may be taken to resolve the situation, as stated in the Public Sector Management Act and Standards.

240. In August 1996, the ACT Interpreter Card was introduced to assist people who speak little or no English to gain access to ACT government services. The Interpreter Card is available in 60 languages and issued free of charge. Over

3,000 cards have been distributed to Canberra's ethnic organizations, as well as to government and non-government organizations. An independent evaluation of the Interpreter Card, conducted in December 1997, concluded that it was effective in helping Canberrans with inadequate English skills to gain access to services.

241. A Cross Cultural Awareness Training Package was also launched in December 1997 and is currently being implemented throughout all ACT government agencies and departments. This, and other customer service programmes, guarantee that ACT public service employees are trained to ensure that all customers are treated equitably.

242. In 1996 the ACT Government issued Welcome to Canberra ACT: Information Booklet for New Settlers to inform new migrants of government and community services. The booklet is issued in eight languages. This publication was widely distributed and updated in December 1997.

243. The ACT Government has implemented the recommendations of the Royal Commission into Aboriginal Deaths in Custody relevant to the ACT. As recommended by the Commission, the ACT government has agreed to report on the implementation of the recommendations on an annual basis. To date, the ACT has prepared four reports.

244. The ACT Government funds Indigenous services such as Gugan Gulwan Aboriginal Youth Corporation and Winnunga Nimmityjah Aboriginal Health Service. Both services are heavily utilized by the ACT Indigenous community.

Overview of racial complaint mechanisms and procedures

245. Under the ACT Discrimination Act 1991, people who believe they have been discriminated against because of their race may make a written complaint to the Discrimination Commissioner. The Commissioner investigates such complaints and may attempt to resolve the complaint by conciliation. Where a complaint is declined by the Commissioner or cannot be resolved by conciliation, the complainant has the right to refer the matter to the Discrimination Tribunal for public hearing. The Tribunal is presided over by a magistrate. There is no limit on compensation which may form part of the settlement of a discrimination complaint.

246. The ACT Government's Community Consultation Programme provides an important avenue to monitor community and individual concerns on racism. In 1997 this consultation process involved discussions with over 50 ethnic community organizations to identify community issues and where appropriate individual organizations have been advised on ACT racial complaint mechanisms and procedures.

Public information and education campaigns to combat racism and promote understanding

247. The Discrimination Commissioner and other staff of the ACT Human Rights Office provide community education on discrimination matters as an important part of their work. Information brochures on a range of discrimination issues are available, many of them in 11 community languages. Community education and publications are provided free of charge.

248. Each ACT government school has an anti-racism contact officer for students, whose role includes an educative component, as well as one of promoting and managing the complaints procedures. A training programme is provided for Anti-Racism Contact Officers for Students.

249. Professional development is offered to teachers to assist them with teaching and learning strategies to combat racism.

250. In 1996 the ACT Government supported an anti- racism rally organized by the Ethnic Communities Council of the ACT.

251. In 1997 a series of community radio programmes was broadcast to promote greater understanding of government and non-government services within Canberra's ethnic communities. The ACT Government's quarterly newsletter, Comunicado, is also used to provide information on anti-discriminatory measures to more than 100 ethnic organizations in the ACT.

252. The 1998 Directory of Multicultural Resources in the Australian Capital Territory provides valuable information on community networks and advises ACT government departments and agencies on communicating with people who have difficulty with English.

253. A key activity in the ACT Government's anti-racism strategy has been the production of a television commercial promoting multiculturalism and racial tolerance.

254. The ACT Government has allocated $2.5 million for the development of an Aboriginal and Torres Strait Islander cultural centre. The centre will be a focal point of contact for the Indigenous community as well as providing a place for non-indigenous peoples to learn about and experience Indigenous cultures in a non-threatening environment. The centre is being developed through an Indigenous working group.

255. The ACT Government recognizes the importance of supporting and participating in National Aboriginal and Islander Day Observance Committee (NAIDOC) Week functions. The ACT Government has over the years contributed financially to the ACT NAIDOC Committee to assist in programme development. The ACT Government ensures that the Aboriginal and Torres Strait Islander flags are flown throughout NAIDOC Week along Canberra's main thoroughfares.

256. The ACT Government participated in a national "Sorry Day" as recommended in the Bringing them Home report.

## Northern Territory

### State policy and legal framework

257. The Northern Territory Government introduced the Northern Territory Anti-Discrimination Act (ADC), which came into effect on 1 August 1993 as the cornerstone of its legal framework in combating racism at the Territory level. Further, a set of principles, "Principles for a Culturally Diverse Society" and a ministerial statement on "Government policy on Ethnic Affairs", outline the Northern Territory Government's policy views on this subject.

Legislative, judicial, administrative and other measures to overcome discrimination

258. The ADC contains the legislative framework to overcome discrimination. The aim of the legislation is to promote equality of opportunity in the Territory by protecting persons from unfair discrimination. The Act provides redress for those with a genuine complaint of discrimination and provides an educational process to ensure that people in the Territory understand their responsibilities in ensuring non-discriminatory behaviour.

259. The Principles for a Culturally Diverse Society will be reflected in Northern Territory government policies and activities, and in its dealings with the non-government sector. Northern Territory government agencies will, in accordance with section 28 of the Public Sector Employment and Management Act, report via their annual reports on the application of these principles. The Office of Ethnic Affairs, in conjunction with the Commissioner for Public Employment, will monitor the implementation of the principles.

Legislative, judicial, administrative and other measures to eradicate racial hatred

260. While there are no specific legislative provisions dealing with racial hatred or vilification, harassment on the basis of race is prohibited conduct under the ADC. The various processes and procedures that underpin the ADC will also assist in the control of this type of behaviour.

Equality and full enjoyment of equal treatment before the law including access to public services and public facilities

261. The ADC provides the legislative framework for the elimination of all forms of racial discrimination in the areas of education; work; provision of accommodation; provision of goods, services and facilities; membership of clubs; and provision of insurance.

262. The ADC operates in addition to the relevant Commonwealth legislation. Section 4(1) of the ADC states that the term race includes:

> The nationality, ethnic or national origin, colour, descent or ancestry of a person; and
>
> That a person is or has been an immigrant.

263. A person may claim to be discriminated against on the ground of race even if the person is, in addition to that race, of one or more other races.

264. For discrimination to take place, it is not necessary that race is the sole or dominant ground for the less favourable treatment, or that the person who discriminates regards the treatment as less favourable. The motive of the person alleged to have discriminated against another person is deemed irrelevant.

265. Although the ADC contains no specific measures to give effect to the undertaking not to sponsor or support racial discrimination by groups or individuals, discrimination on the basis of race in specified areas of activity is prohibited.

266. The Public Sector Employment and Management Act 1993 (PSEMA) imposes further obligations in respect of the administration of government agencies and the conduct of employees and Chief Executive Officers of the public sector.

267. Regulation 3(b) of the Public Sector Employment and Management Regulations states that:

> Human resource management actions shall be taken in such a manner as to ensure the exclusion of ... unlawful and unjustified discrimination on any ground in respect of all employees and persons seeking employment in the public sector.

268. Clause 4.2 of Employment Instruction Number 13 - Code of Conduct of the Public Sector Employment and Management Employment Instructions provides that a breach of regulation 3 constitutes a breach of discipline under section 49(p) of the PSEMA. Clause 16 requires all employees to comply with the provisions of the ADC in their dealings with other employees and members of the public.

Overview of racial discrimination complaint mechanism and procedure

269. The Anti-Discrimination Commissioner is responsible for the administration of the ADC. The law gives people the right to lodge complaints if they believe they have been treated unfairly or discriminated against.

270. Complaint forms have been designed to assist people from a non-English speaking background to present their complaint. Assistance is also provided by the Legal Aid Commission, Aboriginal Legal Aid, advocacy groups, Community Legal Aid and the Office of Ethnic Affairs.

271. After a full investigation by the Commission staff, a delegate of the Commissioner makes a prima facie decision as to whether or not discriminatory conduct has occurred. This decision is conveyed in writing to both parties and translated if necessary.

272. The matter is then referred for conciliation, and if conciliation fails it is referred to the Commissioner for a hearing. The Commissioner can make orders, including compensation.

Provision of public information and education campaigns to combat racial discrimination and to promote tolerance and understanding

273. A vital part of the Anti-Discrimination Commissioner's functions within the Northern Territory is to undertake public education programmes, training, consultation and research. The Commissioner is required to assist both government and non-government organizations develop and implement strategies to overcome unlawful discriminatory acts and practices, and to report to the Northern Territory Government on the laws and regulations of the Territory to ensure they are consistent with the ADC. The Commissioner prepares and publishes guidelines and codes to assist people and organizations to comply with the ADC.

274. The Commissioner has produced a video advising Indigenous people in remote communities of their rights. The video is produced in nine Aboriginal languages, an initiative unique to the Northern Territory. Fact sheets and pamphlets are produced in seven European and Asian languages. Public education sessions are

arranged for specific language and cultural groups with the assistance and support of indigenous and migrant peak bodies.

275. The aims and objectives of the ADC are further promoted through indigenous and ethnic radio.

276. Further, the Northern Territory Government has established the Northern Territory Office of Ethnic Affairs, which cooperates with the Ethnic Communities Council and the Multilingual Broadcasting Council and the Anti-Discrimination Commissioner in the conduct of public education and other promotional programmes to combat racial discrimination and to promote tolerance and understanding.

Tasmania

277. The Tasmanian Government has enacted legislation which provides for the recognition of cultural and ethnic ties in dealings with young persons under child protection laws (Children, Young Persons and Their Families Act 1997) or general offences against the law (Youth Justice Act 1997). The legislation focuses on the retention of children within their family or cultural/ethnic groups rather than removal to other cultural groups. The legislation includes the Aboriginal Child Placement Principle, which necessitates consultation with the Aboriginal community before placing any child from that community who comes into the care of the state.

278. The Tasmanian Government, acknowledging the benefits of multiculturalism, incorporated the Federal Government's Code of Face Ethics into Parliament in 1997.

279. The Tasmanian Aboriginal Lands Act 1995 aims to promote reconciliation with the Tasmanian Aboriginal community by granting to Aboriginal people certain parcels of land of historic or cultural significance. The commencement of the Act resulted in the handover of 12 parcels of land to the Aboriginal Land Council of Tasmania (ALCT). ALCT is a statutory body elected by the Aboriginal community for the management of Aboriginal land.

280. In 1994, the Government endorsed the Tasmanian Principles for a Culturally Diverse Society.

281. In order to combat racism in schools, the Department of Education, Community and Cultural Development is working towards introducing an anti-discrimination strategy.

282. The Tasmanian Government has recently introduced into Parliament the Anti-Discrimination Bill 1998. That Bill will, amongst other things, prohibit discrimination on the grounds of race. It will apply to the areas of employment, eduction and training, provision of facilities, goods and services, accommodation, and membership and activities of clubs. The Bill will also prohibit the incitement of hatred towards, or serious contempt for, or severe ridicule of, a person or a group of persons on the grounds of, amongst other things, the race of the person or any member of the group. This Bill was passed in November 1998.

283. In August 1997, the Tasmanian Government responded to the report of the Human Rights and Equal Opportunity Commission National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their

Families. Whilst some measures and strategies are already in place in Tasmania, it is recognized that there is a continued need to review policies and attitudes affecting Aboriginal people. A number of measures are outlined below.

In response to the issues raised by the Inquiry, a Police Officer on Aboriginal Issues has been appointed by the Department of Health and Community Services. This officer is responsible for ensuring that the policies and procedures of the Department that affect the well-being of Aboriginal children and families are appropriate, and that they embody the principle of self determination for Aboriginal people. The Policy Officer will also develop a policy framework and establish protocols and procedures that ensure that Aboriginal people have appropriate access to personal information held by the Department and other agencies.

Tasmania has made a commitment through the recent Ministerial Summit on Aboriginal Deaths in Custody to address the over-representation of Indigenous people in the criminal justice system, through the development of strategic plans, in partnership with Indigenous peoples. The plans will address: underlying social economic and cultural issues; justice issues; customary law; law reform; and funding levels. The plans will include: a jurisdictional target for reducing the rate of over-representation of Indigenous people in the criminal justice system; planning mechanisms; and methods of service delivery monitoring and evaluation.

Tasmania's commitment to this process will support continued implementation of the recommendations of the Deaths in Custody report, and enable continued review of the treatment of Indigenous children within the criminal justice system.

284. The Tasmanian State Government launched a Changing Workplace Behaviour Management Plan (CWBMP) in March 1997. This plan was developed for the elimination of harassment and anti-discrimination. The CWBMP is service-wide and agencies are required to report twice a year to Cabinet on their progress towards implementing the outcomes of the Plan. Additionally, the state government has identified Equal Employment Opportunity (EEO) Target Groups. Target groups are those that have been subject to discrimination in employment opportunity and are under-represented in the state service as a whole or are concentrated in particular low status areas. These target groups include Aboriginals and Torres Strait Islanders and people from non-English speaking backgrounds. Each agency is required to develop and implement an EEO management plan which includes EEO programmes and the number of people employed, transferred and promoted from the designated target groups is reported by agencies in their annual reports.

Article 2(b). Special and concrete measures taken in social, economic, cultural and other fields to ensure the adequate development and protection of certain racial groups or individuals belonging to them for the purpose of guaranteeing them the full and equal enjoyment of fundamental freedoms in accordance with article 2

2.5. Land rights

285. Continued access to land has long been recognized as an important element in the survival of Indigenous people. All Australian states and territories have some form of legislation relating to the provision of access or the return of

land to Aboriginal peoples. Legal advice indicates that native title rights are usually preserved in granting land under land rights laws.

286. Fifteen per cent of the Australian continent is now Aboriginal owned or controlled. Commonwealth government spending (in addition to that by several state and territory governments) on land and native title now amounts to $164m per annum, including $45m annually for land purchases.

287. The Aboriginal and Torres Strait Islander Commission (ATSIC) is the Commonwealth instrumentality responsible for the provision of advice on the administration of three Commonwealth Acts and other legislative proposals for land rights. Commonwealth land rights legislation seeks to recognize and provide for Aboriginal peoples and Torres Strait Islander rights and needs in relation to land. Commonwealth legislation includes the Aboriginal Land Rights (Northern Territory) Act 1976, the Aboriginal Land Grant (Jervis Bay Territory) Act 1986 and the Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987. These Acts provide for land rights in the Northern Territory, the Jervis Bay Territory in New South Wales and the Lake Condah and Framlingham Forest regions in Victoria respectively.

288. In December 1995, the Jervis Bay National Park and the Jervis Bay Botanic Gardens were handed back to the Wreck Bay Aboriginal Community Council under the Aboriginal Land Grant (Jervis Bay Territory) Act 1986. The Act provides that these areas be leased back to the Director of National Parks and Wildlife to be jointly managed by Aboriginal peoples and the Australian Nature Conservation Agency, now known as Environment Australia.

289. The Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987 provides for the grant of some lands in Victoria to Aboriginal people and includes the provision of by-law making powers.

290. The Aboriginal Land Rights (Northern Territory) Act 1976 (the Aboriginal Land Rights Act) makes provision for the granting of inalienable freehold title, with exclusive rights of possession and access, to land in the Northern Territory to Aboriginal land trusts. These rights are comparable to other forms of freehold title and represent the strongest legislative form of land rights granted to Indigenous people in Australia. These rights are granted on the basis of recognition of ongoing traditional association with the land or where land was previously an Aboriginal mission or special Aboriginal reserve. In the context of such claims, Aboriginal people are required to prove their traditional association with the land.

291. In particular, the Aboriginal Land Rights Act provides for the investigation and determination by an Aboriginal Land Commissioner of traditional claims to vacant Crown land or certain land held by or on behalf of Aboriginal peoples. The Aboriginal Land Rights Act provides that the Minister for Aboriginal and Torres Strait Islander Affairs has the power to accede to the recommendations made by the Aboriginal Land Commissioner to grant lands where a traditional claim is proven.

292. Since the commencement of the Aboriginal Land Rights Act on 26 January 1977, almost half of the land in the Northern Territory has been granted under its provisions to Aboriginal land trusts as a result of land claims. As of 19 February 1998, 122 land claims were outstanding, eight repeat land claims were awaiting hearing by the Aboriginal Land Commissioner, and two reports were in

the process of being completed. No new land claim applications have been filed after 4 June 1997 in accordance with subsection 50(2A) of the Aboriginal Land Rights Act (the "sunset clause").

293. The Aboriginal Land Rights Act was amended in 1987 to provide for a "sunset clause". The Government's intention, when amending the Aboriginal Land Rights Act in 1987 to provide for the sunset case, was to give a measure of certainty to the land claim process. The sunset clause came into effect on 4 June 1997 and prevents the Aboriginal Land Commissioner from investigating and reporting on any applications lodged after that date.

294. The Northern Territory Government has, in recent years, agreed to the scheduling of certain areas (particularly Aboriginal owned pastoral leases) under claim without the need for the claim to be heard by the Aboriginal Land Commissioner.

295. The Northern Territory's Pastoral Land Act 1992 provides for excisions on pastoral leases to compensate Aboriginal people who are unable to claim land as traditional owners but are able to demonstrate a long-standing connection to those areas. A Memorandum of Agreement (MOA) relating to community living areas in Northern Territory pastoral districts, was signed in 1989 by the Commonwealth and Northern Territory Governments. Following the signing of the MOA, 89 community living areas on stock route and stock reserve areas in the Northern Territory had been granted by the end of the past financial year.

296. In 1995 the Commonwealth and the Northern Territory reached an arrangement that an amendment be made to the Aboriginal Land Rights Act in return for the Northern Territory accepting Commonwealth proposals for amendment to the Pastoral Land Act 1992. The proposed amendments to the Pastoral Land Act 1992 are designed to facilitate the expeditious granting of community living areas (excisions) on pastoral leases. The Commonwealth amendments to the Aboriginal Land Rights Act will give effect to an earlier amendment intended to prevent the lodgment of land claims over stock routes and reserves. The Commonwealth's Aboriginal Land Rights (Northern Territory) Amendment Bill 1997 was introduced into Parliament; however, it lapsed in 1998. A new bill is expected to be introduced in the current Parliament It is intended that the stock route amendments can commence at the same time that the Northern Territory's amendments to its Pastoral Land Act 1992 are effected.

297. ATSIC continues to monitor and promote legislation and other measures which recognize and provide for the land needs of Aboriginal and Torres Strait Islander people in the states and territories.

298. The importance of land to Australia's Indigenous people has also been acknowledged by various state acts, beginning in South Australia in 1966. In northern and western South Australia, large areas have been returned to traditional owners under inalienable freehold title. There are land claims processes under New South Wales (1983) and Queensland (1991) legislation. In these states and the rest of Australia, many areas of former reserve land have also been returned under some form of title to the communities occupying them. The Tasmanian Government also introduced legislation in 1995 which facilitates the return of land.

Review of Aboriginal Land Rights Act

299. The Aboriginal Land Rights Act has not been the subject of a major reviesince 1983. On 16 July 1997, the Minister for Aboriginal and Torres Strait Islander Affairs, Senator John Herron, announced a review of the Aboriginal Land Rights Act and in October 1997 Mr John Reeves QC was appointed to undertake the review.

300. After an extensive consultative process which included Aboriginal people, the report Building on Land Rights for the Next Generation, Report othe Review of the Aboriginal Land Rights (Northern Territory) Act 1976 was presented to the Minister for Aboriginal and Torres Strait Islander Affairs on 20 August 1998. It was tabled out of session in the Senate on 21 August 1998. The report is broad ranging and makes recommendations for substantial changes to the Aboriginal Land Rights Act. The Government will give careful consideration to the report to ensure that the interests of all stakeholders, including Indigenous interests, have been adequately addressed.

2.6. Native title

Mabo decision

301. On 3 June 1992 the High Court of Australia held in Mabo v. Queensland (No 2) that the common law of Australia recognizes native title to land. The High Court rejected the doctrine that Australia was "terra nullius" (a land belonging to noone) at the time of European settlement and, in finding that the Merian people of the Torres Strait had a right to the possession, occupation, use and enjoyment of most of the Murray Islands in the Torres Strait, allowed for the possibility that native title can continue to exist where Aboriginal peoples and Torres Strait Islanders have maintained their connection with their land through the years of European settlement and where their title has not been extinguished by valid acts of government. Further, the Court found that the content of native title - the rights which it contains - is to be determined according to the traditional laws and customs of the native title holders involved.

Native Title Act 1993

302. The Native Title Act 1993 (NTA), which was passed by the Australian Parliament in late December 1993 and commenced on 1 January 1994, was one part of the then Commonwealth Government's response to the Mabo decision. In summary the NTA:

Recognized native title rights and set down some basic principles in relation to native title in Australia;

Provided for the validation of government acts which occurred prior to the legislation coming into effect which may have been invalid because of the existence of native title;

Provided for a "future act" regime in which native title rights would be protected and conditions imposed on acts affecting native title land and waters;

Provided a process by which native title rights could be established and compensation determined, and which allowed determinations to be made as to whether future grants could be made or acts done over native title land and waters; and

Provided for a range of other matters including the establishment of Native Title Representative Bodies funded by the Commonwealth to provide assistance to native title holders.

303. At the time the Act was passed, it was assumed, based on the Mabo decision itself, that native title had been extinguished on leasehold land; and that the processes of determining native title would relatively soon result in a register of native title interests enabling ready identification for future dealings over native title land.

Early amendments to the NTA

304. With experience it became clear that amendments to the NTA were required. In late 1995 the then Government introduced amendments to the Parliament to deal with constitutional issues raised by a High Court case (the Brandy case) which had the practical effect of requiring the Federal Court rather than the National Native Title Tribunal (as had been the arrangement under the NTA) to make native title determinations.

305. Court decisions had also eroded the acceptance test designed to prevent frivolous or vexatious native title claims, and there was no legal certainty for agreements between native title and other parties.

306. The Commonwealth Government undertook to retain the Native Title Act but to reserve the right to amend it to ensure its workability; to respect the provisions of the Racial Discrimination Act; and to ensure that any amendments to the Native Title Act were preceded by wide consultation.

307. In June 1996, the Government introduced the Native Title Amendment Bill 1996 into the Commonwealth House of Representatives and in October 1996 put forward a range of additional amendments to the Bill, particularly about the right to negotiate and the accountability of Native Title Representative Bodies. The substance of the proposed Bill and additional amendments were incorporated into the Native Title Amendment Bill 1997.

The Wik decision

308. In a lengthy and very complex decision involving five separate judgments, the Australian High Court found in December 1996 in the Wik case that the grant of particular pastoral leases under Queensland legislation did not confer exclusive possession on the lessees and that any native title held by the Wik and Thayorre peoples over the land was not necessarily extinguished.

309. As enacted in 1993, the NTA made little provision for native title to co-exist with other interests in land (for example, pastoral leases) because of the assumption that native title could not survive such a grant. As a consequence of the Wik decision, actions over pastoral lease land since the Act's commencement in January 1994 could be invalid. Moreover, as it was not considered necessary to ensure that such acts could be done under the NTA, it contained no means by which government acts could be done over pastoral lease land lawfully.

310. This meant that many routine land dealings (granting permits for water use or building, or issuing appropriate new tenures over former pastoral lease land) became potentially unlawful and could not therefore be done unless the Act was amended.

The Native Title Amendment Act 1998

311. In summary, the Native Title Amendment Act 1998 amends the Native Title Act to:

Validate acts that may have been done invalidly on the previously understood assumption that pastoral leases extinguished native title;

Put in place an effective registration test for native title claims for the first time;

Resolve the constitutional difficulties arising from the High Court's decision in the Brandy case;

Give greater recognition to the role of Native Title Representative Bodies and to specify their roles and responsibilities;

Ensure legal certainty for voluntary negotiated agreements about native title and encourage their use; and

Reflect the Wik decision.

312. The Act precludes large-scale extinguishment of native title on pastoral leases (over 40 per cent of Australia's land area) and in line with the common law as defined in the Wik decision, limits extinguishment on pastoral leases to native title rights inconsistent with those granted to the pastoral leaseholder. Any further extinguishment can only be by agreement with the native title holders or by means of a non-discriminatory compulsory acquisition. Native title will still be claimable on about 79 per cent of Australia covered by Aboriginal land, Crown land and pastoral lease land.

313. Under the Native Title Amendment Act 1998, section 7 provides that the NTA is to be read and construed subject to the provisions of the Racial Discrimination Act 1975 (RDA). The new section reflects the position under the original section of the NTA, namely, that the NTA is to be read and construed subject to the provisions of the RDA. Like its predecessor, the new section 7 makes it clear that it is not intended to nullify the specific rules prescribed by the NTA in relation to acts affecting native title. That is, the RDA cannot operate to invalidate an act affecting native title, whether it is a past act, intermediate period act or future act, that is valid under the NTA.

314. The RDA will only be relevant in construing ambiguous terms in the NTA. This means that the RDA will continue to operate in relation to the performance of functions and the exercise of powers conferred by or authorized under the NTA. This does not prevent the performance of functions or the exercise of powers, but may affect how those functions are performed and how those powers are exercised.

315. In addition, the Act protects native title by providing a stronger non-discriminatory regime for compulsory acquisitions. Neither the original Act nor

the amended Act enable the states and territories (which are responsible for land management in Australia) to compulsorily acquire land for the benefit of third parties: they simply recognize that this is the case for some jurisdictions under their own laws.

316. The Government decided on its response to the Wik decision after close consultation with all parties with an interest in land including Indigenous people; resource-based industries; pastoralists and farmers; state and territory governments; and local government. The Government took a legislative approach which represented a compromise between those interests, maximizing certainty for all parties while recognizing potentially co-existing native title on pastoral lease land.

Request by the Committee

317. In August 1998, the Committee requested information from Australia under article 9 paragraph 1(b) of the Convention. The request primarily concerned the Native Title Amendment Act 1998 but also covered the role of the Aboriginal and Torres Strait Islander Social Justice Commissioner and changes to land rights policy.

Native title claims

318. As at 13 October 1998, there were a total of 3,702 applications lodged with the National Native Title Tribunal. This included 878 native title determination applications 2/. This number includes native claims applications that have been accepted and are at various stages of consideration by the Tribunal; those that have not yet been accepted; those that have been referred to the Federal Court; and those that have been rejected, withdrawn or dismissed.

319. In addition to the original determination of native title made by the High Court in the Mabo case, there have been a number of judicial determinations of native title, including three consent determinations in favour of the Dunghutti people at Crescent Head on the New South Wales north coast; the people of Hopevale in far North Queensland; and recently, the Western Yalanji peoples also in far North Queensland; and the peoples of Moa Island and Saibai Island in the Torres Strait. The Yorta Yorta decision has found that native title does not exist in relation to land and waters in Victoria and NSW by the Yorta people, who were unable to show relevant connection to the area.

The Indigenous Land Fund

320. The second part of the Government's response to the High Court's decision in Mabo v. Queensland (No. 2) was the establishment of an Indigenous Land Fund, a permanent self-financing fund giving Indigenous communities the means to acquire land. The Indigenous Land Fund seeks to assist Indigenous people to acquire and manage land, in recognition that many Indigenous Australians will be unable to establish that they still have native title. It is for this reason that the current Government is preserving the $1.3 billion land fund to allow the purchase of $45 million worth of land every year.

321. The Land Fund was originally set up under the NTA, which provided for the establishment of the National Aboriginal and Torres Strait Islander Land Fund to acquire land; and to manage the acquired land in a way providing economic,

environmental, social or cultural benefits to the Aboriginal peoples and Torres Strait Islanders. The Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995, assented to on 29 March 1995 established the Land Fund and an Indigenous Land Corporation (ILC). The purpose of the ILC is to assist Aboriginal and Torres Strait Islander people to acquire land and to assist them to manage Indigenous held land so as to provide economic, environmental, social or cultural benefits. The functions and powers of the ILC are land acquisition; land management; and anything incidental or conducive to the performance of those functions.

2.7. Social, economic and cultural measures for Indigenous Australians

Education and training

322. According to the Australian Constitution, state and territory governments are responsible for all matters relating to school education and technical and further education. However the 1967 referendum gave the Commonwealth Government special responsibilities in Indigenous affairs.

323. In October 1989, the National Aboriginal and Torres Strait Islander Education Policy (AEP) was endorsed by Commonwealth, state and territory governments and came into effect from 1 January 1990. The AEP sets out 21 long-term goals with the objective of achieving educational equity for Indigenous Australians by the year 2000. In particular, the AEP establishes as the standard for Indigenous Australians the level of educational access, participation and outcomes achieved by non-Indigenous Australians.

324. In February 1993, the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) agreed to undertake a national review of the effectiveness of the AEP in its first triennium to assess the progress of the AEP in improving access to, participation in and outcomes from education of Indigenous people. The National Review of Education for Aboriginal and Torres Strait Islander Peoples was completed in 1994 and proposed strategic directions for 1997 to 1999. In May 1995, in response to the Review, MCEETYA reaffirmed their commitment to the AEP and pledged themselves to endeavour to increase their financial efforts to improve Indigenous education. In addition, in December 1995, MCEETYA established a number of priority areas and agreed to an outcomes focus for this work.

325. The Commonwealth Government supports the AEP through a number of identified supplementary programmes: the ABSTUDY income assistance scheme; the Indigenous Education Strategic Initiatives Programme (IESIP), the Indigenous Education Direct Assistance programme (IEDA), the higher education support programme and VET sector funding arrangements.

326. ABSTUDY was introduced in 1969 as a special measure in response to the historical educational inequities experienced by Aboriginal and Torres Strait Islander peoples. The Student and Youth Assistance Act 1973 (ABSTUDY) and special appropriation bills assist Aboriginal and Torres Strait Islander primary students living at home who are aged 14 years or over on 1 January in the year of study, and full-time secondary and tertiary students, by providing income support and other supplementary assistance tailored to their needs. Some supplementary benefits are also available to part-time, mature-aged secondary and to tertiary students. The 1998-99 Commonwealth Government Budget provided $132.5 million under ABSTUDY.

327. In 1990 the Commonwealth Government further supported the AEP under the Indigenous Education (Supplementary Assistance) Act 1989 through the Aboriginal Education Strategic Initiatives Programme, as well as through several direct assistance programmes. In 1991 the latter were amalgamated into the Aboriginal Education Direct Assistance programme and other special allocations in the Commonwealth's funding of higher education institutions.

328. In 1996, in response to the recommendations of the national review of the AEP, the Indigenous Education (Supplementary Assistance) Act 1989 was amended. These amendments restructured the then Aboriginal Education Strategic Initiatives Programme. Since January 1997, IESIP has provided funding to education and training providers in the preschool, school and VET sectors under three elements: Supplementary Recurrent Assistance (SRA); Transitional Project Assistance (TPA); and Strategic Results Projects (SRP).

329. The 1998-99 Commonwealth Government Budget provides $118.4 million through IESIP. The majority of funding is provided under SRA and is based on an enrolment based per capita rate, with additional loadings for geographically remote providers.

330. IESIP is unique in that it is based on agreed performance indicators and improvement targets for Indigenous students in relation to the 21 goals of the AEP. All state and territory governments as well as other education providers in receipt of IESIP funding have set performance indicators for the measurement of progress throughout the 1997-1999 triennium and established baseline data and targets for improvements in key areas such as literacy, numeracy and retention rates in each year of the triennium.

331. 1997 was the first year for which about 170 education providers reported under IESIP on their performance indicators and annual targets. Preliminary analysis of data from school providers suggests that there is an increased awareness of the needs of Indigenous students by education providers, with increased provision of a more culturally appropriate and inclusive curriculum, the employment of Indigenous staff in schools and the involvement of Indigenous parents and community members.

332. The Indigenous Education Direct Assistance programme comprises three elements: the Aboriginal Tutorial Assistance Scheme, the Vocational and Educational Guidance for Aboriginals Scheme and the Aboriginal Student Support and Parent Awareness Programme. The 1998-99 Commonwealth Government Budget provides $60.2 million through the Indigenous Education Direct Assistance programme.

333. The Aboriginal Tutorial Assistance Scheme (ATAS) offers supplementary tuition and other kinds of study assistance to students at all levels of education, from primary school to TAFE (technical and further education) college, university and other formal training programmes. The aim of ATAS is to assist Indigenous students to achieve educational outcomes equal to those of other Australians.

334. ATAS makes qualified tutors available to help Indigenous Australian students who need assistance with their studies. It provides funds for tutorial assistance for individuals and small groups, and the operation of homework centres to help increase students' participation and completion rates in education and training and improve academic outcomes.

335. The Aboriginal Student Support and Parent Awareness Programme (ASSPA) funds school-based parent committees for a variety of activities designed to enhance educational opportunities for Indigenous Australian students in preschool, and in primary and secondary schools. The programme aims to increase the participation and attendance of Indigenous Australian students, increase the participation of their parents in educational decision making and help schools respond better to students' educational needs and aspirations.

336. The school-based parent committees consist of parents of Indigenous students at a school or preschool, a school representative, students (if at a secondary school) and members of the local Indigenous community, if desired. This ASSPA committee completes an application form which details the activities that are planned for the year. The ASSPA committee is responsible for managing the funds and undertaking the activities. There were around 3,800 ASSPA committees in 1998, covering approximately 105,000 Indigenous students. Activities undertaken by ASSPA committees may involve both Indigenous and non-Indigenous students and teachers.

337. The Vocational and Educational Guidance for Aboriginals Scheme (VEGAS) funds activities to improve retention rates and develop informed further education, training and employment options. The scheme provides grants to sponsoring organizations to:

Conduct projects for Indigenous Australian secondary school students and their parents;

Conduct projects for Indigenous Australian prisoners which foster positive attitudes towards participation in education; and

Provide information to assist Indigenous secondary school students and their parents to consider options available for further study or a career.

Higher education

338. Overall, the number of Indigenous students in higher education has continued to increase since the AEP strategies of 1990. In 1997 Indigenous students comprised approximately 1.2 per cent of Australian higher education students. Despite the increase, Indigenous people are still under-respresented in higher education as they comprise 1.7 per cent of the population aged 15 to 64 years at the 1996 population census. In addition, academic success and retention rates of Indigenous students are significantly lower than for other groups.

339. In 1998 there were 7,789 Indigenous students in higher education. The Government provides funding to higher education institutions to meet the particular needs of Indigenous students. In 1998-99, $21.95 million will be provided for this purpose under the Indigenous Support Funding programme which seeks to achieve participation and success rates for Indigenous students comparable with those of higher education students generally. The programme provides support services such as academic preparation, counselling and provision of study centres.

340. Separately identified Indigenous support funds are provided to higher education institutions to meet the special needs of Indigenous Australian students and to advance the goals of the National Aboriginal and Torres Strait

Islander Education Policy. As part of the funding arrangements, institutions are required to establish targets for Indigenous Australian students and to develop Indigenous Australian education strategies. Support funding allocations take account of the need for institutions to realize successful student outcomes in access, participation, completion and retention.

341. In addition to Indigenous support funding, the Government announced funding in 1996 of $8.8 million over three years to establish five Indigenous higher education centres. The Centres are expected to encourage the development of research skills and academic excellence within the Indigenous community and help to nurture and promote Australian Indigenous cultural heritage. The centres are being developed in the following disciplines:

Indigenous Health, Law and the Environment at the University of Newcastle;

Indigenous Natural and Cultural Resources at the Northern Territory University;

Indigenous Research and Development at the Curtin University of Technology specializing in professional education and training in health education, science and technology;

Indigenous History and the Arts at the University of Western Australia; and

A Centre for Excellence in Indigenous Higher Education at the University of South Australia specializing in Indigenous Curriculum and Research Development, Executive Training and Holistic Health.

342. In 1997, additional funding of $1.5 million over three years was allocated for a sixth Indigenous higher education centre specializing in Indigenous public health, to be administered by a consortium of The University of Queensland and Queensland University of Technology.

343. The Living In Harmony campaign is a Commonwealth government initiative which is primarily a community based education programme that provides funding for projects which promote community harmony and reduce racism and bigotry. The initiative is implemented through three linked elements: a community grants programme, a partnership programme, and a public information strategy to promote and explain the overall concept. With respect to the community grants programme, the Commonwealth Government has committed $2.5 million to provide financial assistance to community based groups and organizations, including indigenous groups and ethnic communities. Through the partnership programme, the Commonwealth Government will work with a small number of organizations to develop demonstration projects which explore different ways of improving social cohesion, tackling racism or generating better understanding, respect and cooperation among people of different backgrounds. The public information campaign is designed to promote and reinforce the concepts and practice of acceptance and fairness in our community. It will build on the strong pre-existing beliefs that Australians already live in harmony with one another and that we should celebrate our achievements in creating a harmonious society.

344. In late 1996, the Commonwealth funded several open learning projects to be conducted during 1997-1999:

$750,000 was allocated for a trial to investigate the merits of providing open learning style education to Indigenous people in correctional institutions and soon after release. The Australian Institute of Criminology has been commissioned to manage and evaluate the pilot, with the Open Learning Agency of Australia (OLA) sub-contracted to oversee the education delivery;

$1,750,000 was allocated to OLA to conduct open learning projects to assist Indigenous Australians in the higher education sector. The projects are to develop:

Education packages customized for Indigenous Australian students covering a broad range of issues, including courses to help prospective students upgrade basic skills to the level required for university study, tertiary level courses such as Social Justice and Legal Issues and specific culture and language courses; and

An electronic network which will link Indigenous postgraduate students and academics across Australia, assisting them with teaching, research, communication, publication and information technology support and supporting the unique relationship which Indigenous academics maintain with their communities.

Vocational education and training

345. The National Strategy for Vocational Education and Training for 1994-1997 identified indigenous people as a group disadvantaged in the vocational education and training (VET) system because their needs were not always identified or incorporated into VET programmes and delivery. In 1997, 2.6 per cent of participants in VET programmes identified as being Indigenous Australians.

346. The Australian National Training Authority (ANTA) established an Aboriginal and Torres Strait Islander People's Training Advisory Council in February 1995 to provide the Authority with advice on key policy issues relating to VET for Indigenous people. In May 1998, Commonwealth and state and territory ministers with responsibility for vocational education and training agreed to a revised National Strategy for VET 1998 - 2003, which includes, as a central objective, achieving equitable outcomes in VET. The Strategy provides a range of measures to address the equity needs of such groups as Indigenous Australians. As part of Commonwealth funding provided to the states and territories, ANTA supports VET for Indigenous people through initiatives such as the Capital Infrastructure Programme (Aboriginal and Torres Strait Islander component). Under this programme, $15 million has been allocated in the period 1996-1998 to support development of capital infrastructure for independent indigenous and community training providers across Australia.

Community development employment projects

347. The Community Development Employment Projects (CDEP) scheme commenced in 1977 when Aboriginal communities requested local employment to be created, with a focus on community development. CDEP is a voluntary scheme which enables Indigenous peoples to be employed part time by Aboriginal and Torres Strait Islander CDEP organizations. Under this scheme, which is particularly important to remote areas with limited job options, Indigenous Australians forego their

right to unemployment benefits in order to undertake work on community projects which reflect the community development, economic, social and cultural priorities of the community.

348. Following recommendations of the Miller report in 1985, CDEP has expanded to include Aboriginal and Torres Strait Islander community organizations in rural and urban areas. Since 1986 the CDEP scheme has become a major focus of the Aboriginal Employment Development Policy (AEDP), as a major community based employment initiative.

349. CDEP is funded and supported through the Aboriginal and Torres Strait Islander Commission (ATSIC) and the Torres Strait Regional Authority (TSRA). Funding is provided to Indigenous community organizations to employ community members and to assist with administration and capital needed to undertake work activities. Work programmes include support and development of community infrastructure and housing, community services, arts and crafts, enterprise development, cultural maintenance activities, outstation development and land care. Participation in CDEP employment aims to provide Indigenous people with work skills that are recognized in the mainstream employment market. It has many other benefits at both the community and individual level, including improved social cohesion, improvements in self-esteem, training opportunities, diversion from substance misuse and criminal activity and the ability to increase income levels where CDEP organizations successfully generate profits.

350. Currently there are 248 CDEP organizations funded and supported by ATSIC, with 30,057 participants, 19,681 in remote areas of Australia and 10,376 in non-remote areas. In the Torres Strait there are 17 CDEP organizations with 1,655 participants. The CDEP scheme currently employs approximately 25 per cent of the Aboriginal and Torres Strait Islander workforce.

351. While the scheme provides substantial employment and training opportunities, it alone cannot overcome the Indigenous unemployment situation. A report commissioned by ATSIC shows that due to population growth, the Indigenous population is likely to increase from 280,000 in 1991 to 400,000 in 2006. The 1996 census shows that the Indigenous population was 353,000. This indicates that the Indigenous population in 2006 will in fact be substantially higher. The population is growing by more than 2 per cent per annum while Indigenous employment is growing at less than 1 per cent per annum. The Indigenous unemployment rate at the 1996 census was 23 per cent. ATSIC believes that this figure is understated because of the number of unemployed people who were engaged in government labour market programmes at the time. (The unemployment rate for non-Indigenous Australians is currently about 8.1 per cent.) Without CDEP the current Indigenous unemployment rate would be about 40 per cent. To improve this situation will require an expansion in Indigenous employment, which is unprecedented. Indigenous people have an unemployment rate that is four times higher than that of the general population. Lack of job skills and of local employment opportunities are two of the main causes.

352. In 1995 the Race Discrimination Commissioner of the Human Rights and Equal Opportunity Commission began an examination of policies and legislation relating to CDEP. The inquiry was undertaken in response to Aboriginal and Torres Strait Islander community concerns about alleged financial disadvantages experienced by participants in the CDEP scheme compared to other low-income earners. The report on the inquiry, which was tabled in Parliament in April 1998, found that the CDEP scheme does not appear to raise any significant issues of racial

discrimination, although there were a number of anomalies identified in the treatment of CDEP participants compared to social security recipients. The report aimed to contribute to informed debate and assist in the development of equitable policies and procedures. By the time the report was published, the concerns raised by HREOC were already being addressed, albeit by a different approach to that suggested in the HREOC report, as a result of the recommendations of the Spicer Review and the 1998-99 budget measure outlined below.

353. In the 1997-1998 budget the Government announced a review of the CDEP scheme to focus in particular on the effectiveness of CDEP in equipping participants for other employment and in providing flexibility on industrial relations issues. The review was headed by Mr. Ian Spicer and was completed in December 1997. While noting the very valuable contribution made to Indigenous community life by CDEP projects, the review recommended some refinement including removing non-workers from the scheme and developing strategies to enhance the scheme's ability to achieve unsubsidized employment outcomes.

354. The Government has also agreed to take steps in the context of the 1998-99 budget to address anomalies between benefits payable to income support recipients and CDEP participants. From March 1999 low-income CDEP workers will receive a $20 per fortnight participant supplement similar to that provided to participants in the mainstream Work for the Dole scheme. The cost of this measure is estimated at $14.3 million in a full year. These costs will be partially offset by the introduction of a more uniform income treatment for CDEP participants. The budget measure will also provide CDEP workers with access to social security add-on assistance such as rent assistance, pharmaceutical allowance, bereavement payments and automatic health care cards, while removing anomalies in the income treatment of pensioners on the CDEP scheme, thus providing more equitable outcomes for all CDEP participants. Other adjustments to the scheme are aimed at making more places available to Indigenous people wanting to work. The Government has also decided to align CDEP with other similar programmes by providing access to the Beneficiary Tax Rebate from July 1998. This will result in $7 million remaining in Indigenous communities and will also minimize costs for participants, who will now not need to lodge tax returns.

Issues

355. Consultation with CDEP communities has identified economic development opportunities as one of the highest priorities. CDEP has the potential to provide a basis for economic development and is currently used to support Indigenous enterprises and joint ventures.

356. The Government maintains a strong commitment to CDEP employment and quarantined the existing participant numbers from 1996 savings measures. In 1998-99 funding for the programme will be $402 million, with $380.7 million going to ATSIC and $21.1 million to the Torres Strait Regional Authority. By the end of 1998-99 it is estimated that a total of 33,083 Indigenous people will participate in the scheme. If CDEP did not exist, then much of this cost would shift to the welfare system to provide unemployment benefits.

357. A new programme - the Business Preparation Scheme - is being piloted as recommended by the Spicer Review. The scheme aims to provide a preliminary

process, which will allow CDEP organizations to establish business enterprises and to facilitate the transition of CDEP participants to mainstream employment.

358. The objective of the CDEP scheme changed on 1 July 1998. CDEP will focus more on the provision of work and skills acquisition to strengthen the scheme and non-workers will be removed from the scheme, as they would be financially better off as clients of the social security system.

359. Changes to mainstream employment assistance delivery arrangements will have a significant positive impact on Indigenous people. The conversion of many of the former labour market programmes to support the new employment services market arrangements will create a more focused and effective employment service. Indigenous people will receive a significant share of the places available under intensive employment assistance, reflecting the multiple sources of their disadvantage in the labour market. As well as those on Newstart allowance, people participating in CDEP schemes are also eligible under the new employment assistance arrangements. In addition the Employment Strategies for Indigenous Australians Programme complement the mainstream arrangements by providing for packages of recruitment and career development assistance negotiated with private and public sector employers and with regional and community organizations.

360. The Government is firmly committed to enhancing opportunities for Indigenous Australians to pursue initiatives that will assist them to achieve economic independence. The Government's economic programmes for Indigenous Australians will provide almost $43 million in 1998-99. The ATSIC Business Development Programme includes the Indigenous Business Incentives Programme (IBIP) and the Business Funding Scheme (BFS).

Australian public service

361. In 1991, the Government directed all departments and agencies to reassess the employment and career development needs of Indigenous peoples and to accommodate these within their organizations in accordance with the objectives of the Aboriginal Employment Development Policy (AEDP). The overall aim of the AEDP is to achieve income and employment equity for Indigenous peoples by the year 2000 through policies applying to all areas of private and public sector employment.

362. The Public Service Commission was advised in 1994-95 that all participating Australian Public Service (APS) agencies had strategies in place to maximize recruitment and career development opportunities for Aboriginal and Torres Strait Islander people. These strategies are designed to ensure that employment in the public sector broadly reflects the composition of the Australian community as a whole in order to be responsive to the values and aspirations of the community.

363. One element of this programme is the Indigenous Cadetship Programme (ICP), designed to assist APS agencies to recruit Indigenous people to the APS. Under this programme, cadets are employed on probation while they complete their studies and appointed to the agency on completion of studies and formal training.

Police and correctional services

364. The Australian Federal Police (AFP) launched their Indigenous Recruitment and Career Development Strategy on 11 July 1995. This strategy, jointly funded by the AFP and the Department of Employment, Education, Training and Youth Affairs (DEETYA), aims to increase Indigenous employment to 2 per cent of the workforce by the year 2000.

365. DEETYA has also provided state and territory governments with assistance for initiatives under the employment strategies element of the Training for Aboriginals and Torres Strait Islander Programme (TAP) to progress lasting cultural changes in Correctional Services agencies. Cross cultural awareness training packages have been developed for both police and prison officers, specifically designed to assist and improve relations between police and Aboriginal and Torres Strait Islander peoples.

366. DEETYA provided funds through TAP to the South Australian Aboriginal Legal Rights Movement to develop a three-day training package for Aboriginal and Torres Strait Islander visitors to support Indigenous offenders in the prison system.

367. The Employment and Training Transition Project (ETPP) was implemented by DEETYA in 1996 as part of TAP. This project, developed in direct response to Recommendation 310 of the Royal Commission into Aboriginal Deaths in Custody, aims to make employment, education and training opportunities more accessible to Indigenous offenders in the immediate post release period. Project guidelines were distributed nationally in 1996. One model project, jointly funded by the Queensland and Commonwealth Governments which targets Indigenous juvenile offenders, is operating in North Queensland. DEETYA in Victoria is currently negotiating with the Government of Victoria for a project to assist ex-Indigenous offenders on release.

Media and film

368. A DEETYA agreement with the National Indigenous Media Association of Australia (NIMAA) was successful in the development and implementation of employment and training strategies with the Koori Mail and the Brisbane Indigenous Media Association (4AAA Radio). The Department also signed a separate agreement with the WIN Television network for the employment and training of three Aboriginal people in New South Wales and Queensland.

369. The key initiative within the film industry involved individual employment strategy agreements with the four key Commonwealth film agencies: Film Australia, the Australian Film Commission, the Australian Film Finance Corporation and the Australian Film, Television and Radio School (AFTRS). These agreements provided for sponsorship of quarterly meetings of an interagency steering committee to assist in the development of links within the industry and funded a series of cross cultural awareness workshops for staff from all four agencies coordinated by AFTRS.

Other industry strategies

370. DEETYA has funded employment strategies in the cultural, tourism/hospitality and rural industries to increase the numbers of Indigenous people employed in these sectors. This funding has included wage subsidies for

traineeships and apprenticeships, assistance for career development and the provision of cultural awareness training.

371. Employment strategies have been undertaken with organizations such as the Tjupakai Aboriginal Cultural Park, Cairns, where local Aboriginal people own the land the park is situated on and have a substantial equity interest in the venture, the South Australian Hospitality Group Training Inc, the Western Australian Hospitality and Tourism Employment and Training Council, the Daiwul Gidja Aboriginal Corporation in the Kimberley. The Department has also assisted with funding consultancies and evaluations for projects.

Australian Chamber of Commerce and Industry

372. The Australian Chamber of Commerce and Industry (ACCI), through its Indigenous Employment Project (IEP), has continued to target a number of sectors, including the security, retail and pharmaceutical, for Indigenous recruitment. Under the terms of the IEP agreement DEETYA provides funding for a network of Indigenous Programme Managers whose job is to:

Build strong and durable links between industry throughout Australia and Aboriginal and Torres Strait Islander communities through the placement of Aboriginal and Torres Strait Islander people in employment in the private sector;

Establish regular and high-level contact between employer associations, including ACCI, industry leaders and the Aboriginal and Torres Strait Islander Commission and leaders of the Aboriginal and Torres Strait Islander communities; and

Increase the number of Aboriginal and Torres Strait Islander people in permanent employment in the private sector.

Local government

373. DEETYA supported joint funding arrangements for Aboriginal Policy Officers (APOs) who are employed with Local Government Associations at the national, state and territory level. The tasks and responsibilities of the APOs have included a role in encouraging Aboriginal and Torres Strait Islander people to participate in their local council as voters and/or candidates, accessing employment opportunities within councils and providing advice to councils on culturally appropriate responses to Indigenous policy issues.

Local Aboriginal Employment Promotion Committees (LAEPCs)

374. The 1992 report referred to the establishment and operation of LAEPCs. Since that time the majority of these committees have been incorporated into Area Co-ordination Committees (ACCs). ACCs were established as part of a strategy to improve the responsiveness of the Commonwealth Employment Service (CES) to local employers and regional labour markets and to improve CES links with regional development organizations.

375. Sixty-one ACCs were fully operational during 1996/97. Twenty-eight had Aboriginal or Torres Strait Islander representation. The current Government has made the commitment to continue funding of ACCs to assist in the development of long-term strategic approaches to employment within their regions.

Regional services

376. In 1994, DEETYA established the Remote Area Field Service (RAFS) to assist clients in remote areas. While addressing the employment and training needs of all remote clients, there was a significant focus on remote Aboriginal and Torres Strait Islander clients and communities. A particular emphasis was subsequently placed on the training need of the newly established RAFS network. Aboriginal Contact Officers and Aboriginal Education Units were established in some CES offices to cater for the specific needs of Indigenous clients. The RAFS were resourced for 106 field staff in 30 locations with Aboriginal or Torres Strait Islander people making up 70 per cent of the staff.

377. The RAFS continued to operate with up to 60 of the established 110 positions specifically identified for Indigenous Australians filled. The transfer of RAFS officers into the new DEETYA structure as Employment Development Officers has helped to link Indigenous employment and education streams of the portfolio at state and territory level in the lead-up to the introduction of Job Network.

Infrastructure projects

378. Agreement has been reached between DEETYA and the Aboriginal and Torres Strait Islander Commission (ATSIC) on strategies and service delivery arrangements to maximize training and employment outcomes for Community Development Employment Projects communities using Health Infrastructure Priority Projects (HIPP) and National Aboriginal Health Strategy (NAHS) funded projects. DEETYA assistance has focused primarily on industry accredited training such as traineeships and apprenticeships. Further assistance has also been available under the Aboriginal Tutorial Assistance Scheme (ATAS).

379. Details of some key projects where DEETYA assistance has been provided follow:

Bamaga Traineeship Project (Queensland). The Department has provided subsidies to employ 11 trainees in the Construction Trade Traineeship to upgrade the skills of existing trade people in the Torres Strait Islander community of Bamaga on Cape York Peninsular.

Bardia Housing and Infrastructure Project (Western Australia). Two training programmes on Stabilised Earth Walling Construction for 14 local members was conducted with 13 trainees completing the course and a number subsequently employed by the contractor.

Cape Barren Island Infrastructure Project (Tasmania). Funding was provided for an accredited pipe-laying course to employ 12 trainees to install water and sewerage pipes for the project.

Julalikari Housing and Infrastructure Project (Northern Territory). The Julalikari Council was funded to develop an Aboriginal Employment Strategy for the Barkly Region. A 12 week pre-vocational course was conducted with the 30 local people who completed the course employed in a range of traineeships in building and construction in the region.

Nambucca Heads Housing and Infrastructure Project (New South Wales). Twelve local Aboriginal people have been employed as apprentice carpenters and bricklayers on this project.

380. Agreements for assistance to six other projects in the Northern Territory, Queensland and New South Wales were negotiated in 1996/97. These projects are expected to start early in 1997-98 with placements for up to 165 apprentices and trainees and 12 other construction workers expected to be achieved using assistance provided under TAP.

Evaluation of programmes

381. The Department has an ongoing commitment to evaluating the performance of its programmes and services. In particular, it seeks to measure the appropriateness and effectiveness of programmes and services designed for disadvantaged groups such as Indigenous Australians.

382. DEETYA evaluation reports published since 1993 include Evaluation of the Network Elements of Training for Aboriginals Programme (TAP) (1994), a Review of Employment Strategies for Aboriginal and Torres Strait Islander People (1994) and a Report of the 1994 ABSTUDY Evaluation (1998). The evaluation of the Aboriginal Study Assistance Scheme (ABSTUDY) found that between 1989 and 1993 there was a large increase in the numbers of Abstudy recipients in tertiary institutions, consistent with a significant increase in Indigenous participation in tertiary education. At the same time, the proportion of applicants receiving ABSTUDY assistance remained relatively stable at about 90 per cent. It was found that the provision of non-financial assistance was also important in improving retention in education, and this was available through programmes which provided other forms of education support, particularly tutorial and homework assistance.

383. Work currently under way includes an evaluation of the Aboriginal Student Support and Parent Awareness (ASSPA) programme, research into the appropriateness of Indigenous specific training schemes and a longitudinal survey of Aboriginal and Torres Strait Islander job seekers. The longitudinal survey of Indigenous Australian jobseekers was designed in consultation with the Aboriginal and Torres Strait Islander Commission (ATSIC). As far as we know, this is the first study of its kind in Australia. Results from the survey will become available through a range of reports which will be produced through a public tender process throughout 1998. The data provide a detailed picture of the labour force experiences of Aboriginal and Torres Strait Islander jobseekers over a two-year period. Analysis will cover the appropriateness and effectiveness of various forms of labour market assistance and, in particular, the extent of recycling of clients through assistance.

384. A review of ABSTUDY was undertaken in the context of the Government's plans to introduce the Youth Allowance from 1 July 1998. The review involved consultation meetings with Indigenous people, communities and organizations and with educational institutions, and written submissions. 3/

Heritage Protection Bill

385. The current Aboriginal and Torres Strait Islander Heritage Protection Act 1984 was only intended to be interim legislation. As a result of a number of legal challenges the then Commonwealth Government commissioned former Federal Court Judge Elizabeth Evatt in October 1995 to undertake a review of the Act.

Ms Evatt reported in August 1996. After extensive consultation, the current Government introduced the Aboriginal and Torres Strait Islander Heritage Protection Bill in April 1998. The Bill was passed by the House of Representatives, but lapsed in the Senate on the calling of the 1998 election. A modified Bill, taking account of indigenous concerns, was reintroduced in November 1998.

386. The Bill follows the intention of the original legislation, namely to create a system whereby protection of indigenous cultural heritage (primarily sites and objects) is, at first instance, the function of the states and territories which, in Australia, have responsibility for land management decisions. The Commonwealth will function as an avenue of last resort. The Bill seeks to improve state and territory heritage protection regimes by setting standards for accreditation of those regimes by the Commonwealth. The Commonwealth regime will continue to be available where states or territories are not accredited. Where accreditation is achieved the Commonwealth will continue to consider cases where protection of a site or object would be in the national interest.

2.8. Social, cultural and economic measures for migrant Australians

National Integrated Settlement Strategy

387. Planning for settlement services that facilitate migrants' early settlement and participation in Australian society occurs under the framework of the National Integrated Settlement Strategy (NISS). Through the cooperation of agencies at all levels of government, settlement planning and coordination activities focus on improving the quality and accessibility of services for migrants.

388. The NISS links a number of state and territory settlement planning committees, ensuring opportunities to consider and address issues of local, regional, state/territory and national interest. Agencies participating in settlement planning activities include those involved in health, housing, education, training, employment and other social services.

389. Commonwealth and state/territory ministers agreed in 1998 that priority should be given to planning and delivering services in the following areas: English training, access to the labour market, housing, translating and interpreting services, support from sponsors, integrating services for humanitarian entrants and assistance for the ethnic aged.

Humanitarian Programme

390. The Australian Government is committed to helping refugees and people who have faced serious abuses of their human rights. Since 1990-91, over 80,000 humanitarian migrants have resettled in Australia under the Humanitarian Programme. The Programme is non-discriminatory and helps people in need from all parts of the world.

391. For 1997-98, the Humanitarian Programme comprises 12,000 places: 10,000 for refugees and persons overseas in humanitarian need of resettlement, and 2,000 for people already in Australia who are found to require protection after assessment against the definition of a refugee set out in the Convention and Protocol relating to the Status of Refugees.

392. Current priority areas for resettlement under the Programme are countries of the former Yugoslavia, the Middle East and Africa. Applicants may qualify under the following three components:

The Refugee Programme - for people who are outside their country of nationality or usual place of residence and are subject to persecution in their home country (4,000 places in 1997-98);

The Special Humanitarian Programme - for people who are outside their country of nationality or usual place of residence and have experienced, or fear, gross discrimination amounting to a substantial violation of human rights (4,067 places); and

The Special Assistance Category (SAC) - for people in vulnerable situations overseas who have some links with Australia. Existing SACs are for citizens of the former Yugoslavia, Burmese in Thailand, Sudanese, Ahmadis from Pakistan, Vietnamese and Sri Lankans (totalling 1,933 places).

393. Entrants under the Humanitarian Programme have special settlement needs which are addressed by the Australian Government in partnership with community-based agencies.

394. The Community Refugee Resettlement Scheme enables voluntary groups to provide support for refugee families for six months after their arrival, including linking them to the services that they require. A grant is paid to the group to assist with the initial expenses involved in settling the families.

395. The On-Arrival Accommodation Programme provides initial subsidized short-term (up to 13 weeks) accommodation in government and privately owned flats to newly arrived refugees and eligible humanitarian entrants. These entrants are provided with an orientation programme including linkage to settlement services. The rent rebate system assists entrants with the initial costs of moving into other rental accommodation.

396. The Commonwealth Government shares with state welfare authorities the costs of settling minors who enter Australia under the Humanitarian Programme, but who do not have parents in Australia.

Community Settlement Services Scheme and Migrant Resource Centre Programmes

397. Under the Community Grants Programme two services are funded, the Community Settlement Services (CSS) Scheme and Migrant Resource Centres (MRCs). The CSS Scheme provides financial assistance to ethnic and other community organizations to provide settlement related services to recently arrived migrants and humanitarian entrants to enable them gain the full benefits of their settlement in Australia.

398. One of the roles of an MRC is to act as a catalyst for developing community awareness of migrant needs, hence promoting the development of migrant services.

Services for immigrant women

399. The Department of Education and Multicultural Affairs (DIMA) works with other Commonwealth departments and agencies to address the needs of migrant and refugee women. It also has a number of portfolio initiatives; for example, DIMA monitors serial sponsorship and its high correlation with the perpetration of domestic violence through its sponsorship and temporary entry processing system, which was introduced in August 1996 to capture permanent entry sponsorship data.

400. In April 1997, DIMA released the video "Marrying and migrating...you have to work at it", to assist couples to make an informed choice about marrying someone from another culture. Information is provided on issues to consider before migration, some aspects of life in Australia and settlement issues; and family relationship issues and services. The video, available in English, Arabic, Mandarin, Thai and Vietnamese, has been distributed free of charge to major service providers and many interested individuals.

401. In the context of the new initiatives to address domestic violence announced in November 1997 at the national domestic violence summit, DIMA is undertaking a research initiative on access to, and disclosure of, a person's domestic violence history to third parties involved in the migration process.

Adult Migrant English Programme

402. The Australian Government, under the Immigration (Education) Act 1971, funds and coordinates the Adult Migrant English Programme (AMEP), an English language teaching programme, to assist recently arrived non-English speaking migrants to acquire the language skills they need to settle effectively in Australia. In 1997-98, 35,968 clients were enrolled with AMEP. The budget allocation was $94.9m. A further $10.4m was raised from user charges.

People from a non-English-speaking background

403. The Workplace English Language and Literacy Programme provides funding for the provision of workplace English language and literacy training for people of non-English-speaking and English-speaking background.

404. English language and literacy training is regarded as a prerequisite of full and equitable participation in the workplace.

## Article 3

### 3.1 Condemnation of racial segregation and apartheid

405. The Australian Government considers that the policy of apartheid constitutes a basic affront to the dignity of the human race and is a flagrant violation of fundamental human rights. It therefore accorded a high priority to the abolition of apartheid in South Africa.

406. In line with the timetable agreed at the Commonwealth Heads of Government Meeting in Harare in 1992, Australia lifted Commonwealth trade and financial sanctions against South Africa in September 1993.

407. The Australian Government closely monitored developments in South Africa in the lead up to democratic elections in April 1994. It provided technical

expertise to the South African Independent Electoral Commission and participants in the international observer presence at the elections. The remaining military sanctions were lifted in June 1994 following their termination by the United Nations Security Council.

408. In May 1994 a non-racial Transitional Government of National Unity was established to implement a five-year transitional programme in South Africa. The Australian Government provided a wide range of assistance to this transition process, including with constitutional, judicial and public sector reforms. With the transitional period drawing to a close in April/May 1999 Australia's long-standing commitment to the ending of apartheid will be realized.

## Article 4

## Measures taken to eliminate racial hatred and discrimination

### 4.1. Racial Hatred Act 1995

409. The Australian Government considered the question of the introduction of criminal and civil provisions in relation to racial hatred and racial vilification. In 1995 the Racial Hatred Bill, containing both civil and criminal provisions, was introduced in the Commonwealth Parliament and was the subject of considerable debate. The criminal provisions in the Bill proposed to address threats to cause physical violence or threats to destroy property because of the race, colour or national or ethnic origin of the victim, as well as the intentional incitement of racial hatred by introducing amendments to the Crimes Act 1914 (Cth).

410. Concerns for the right to freedom of speech caused the Senate to reject the proposed amendments to the Crimes Act 1914. The criminal provisions were removed from the Bill and the Racial Hatred Act 1995 (RHA) was passed through the Parliament in 1995, containing a civil prohibition on offensive, insulting, humiliating or intimidating behaviour based on race. The RHA came into force on 31 October 1995 and provides an important avenue of complaint to the HREOC for people affected by racially offensive conduct. The RHA strikes a balance between the right to freedom of expression and the rights of all persons to live free from fear of violence and racial hatred. Nothing which is said or done reasonably and in good faith in the course of any statement, publication, discussion or debate made or held for an academic, artistic or scientific purpose, or for any other purpose in the public interest, including fair and accurate reporting and fair comment, can be the subject of a complaint under the Act.

411. The Government has monitored the operation of the prohibition on offensive, insulting, humiliating or intimidating behaviour based on race. The Government considers freedom of speech to be one of the most basic tenets of Australia's democratic system, and believes that any measures to restrict that freedom must be carefully circumscribed. Where there is a clear necessity to restrict that right in the public interest or, perhaps, for reasons of international diplomacy, the Federal Government will act, and has acted, to prohibit or suppress propaganda.

412. While there is currently no general prohibition on the incitement of discrimination, hostility or violence by advocating national, racial or

religious hatred at the Commonwealth level, there are some restrictions on incitement to racial hatred or violence.

413. Section 7A of the federal Crimes Act 1914 provides that it is an offence for any person to incite, urge, aid or encourage, or print or publish any writing which incites to, urges, aids or encourages, the commission of offences against any federal or territory law or the carrying on of any operations for or by the commission of such offences.

414. The Crimes Act 1914 also creates offences of sedition, including counselling, advising or attempting to procure the carrying out of a seditious enterprise. "Seditious enterprise" is defined to include enterprises carried out for the purpose of promoting "feelings of ill-will and hostility between different classes of Her Majesty's subjects so as to endanger the peace, order or good Government of the Commonwealth". (Exceptions exist for certain actions done in good faith.)

415. Provision also exists in the Crimes Act 1914 to enable the Federal Attorney-General to apply to the Federal Court for a declaration that a body of persons is an unlawful association. Such bodies include organizations which, by propaganda, advocate or encourage the doing of any act having or purporting to have as an object the carrying out of a seditious intention. It is also an offence for a person, by violence or by threats or intimidation of any kind, to hinder or interfere with the free exercise or performance, by any person, of any political right or duty.

4.2. Reservation under article 4

416. Since article 4(a) envisages the creation of a criminal offence, provision of civil remedies falls short of satisfying the requirements of this article. Criminal sanctions against racial vilification have not been passed into law at the Commonwealth level or in some other jurisdictions. The Government, therefore, is not in a position to remove the reservation. The Government's views on criminal sanctions concerning racial vilification have been discussed above.

4.3. Reconciliation

417. The establishment of the Council for Aboriginal Reconciliation (see under article 2, above) has been a positive measure which has assisted in the eradication of racial hatred and discrimination.

## Article 5

## Equality before the law and the equal enjoyment of human rights

5.1. Equal access to the law

Access to administrative review by members of Australia's ethnic communities

418. The Administrative Review Council (ARC) Report Number 34 to the Attorney-General on Access to Administrative Review by Members of Australia's Ethnic Communities (the Report) was tabled in the House of Representatives on 12 September 1991 and in the Senate on 8 October 1991.

419. The Report recommended that administrative review agencies make themselves accessible to disadvantaged groups, including ethnic communities, using the Ombudsman and basic marketing techniques. Recommendations also dealt with communication, collection of data, use of interpreters, training and resources.

420. The recommendation that the Ombudsman be given a greater role in the promotion of administrative review was considered by the Senate Standing Committee on Finance and Public Administration in its report Review of the Commonwealth Ombudsman. The Government's response to that report was tabled in the Senate on 15 December 1992. The response provided additional funds for publicizing of the Office of the Ombudsman targeted to low income and disadvantaged people, including ethnic communities; and for the Ombudsman to conduct a survey of public awareness of the Office.

421. In 1995 the previous Government responded to the Report, as part of the Justice Statement's national strategy to enhance access to the justice system, by supporting the majority of the ARC recommendations.

Multiculturalism and the Law Report

422. As part of the National Agenda for a Multicultural Australia the Attorney-General referred to the Australian Law Reform Commission (ALRC) the question of whether Australian laws are appropriate to a multicultural society. The ALRC report, entitled Multiculturalism and the Law (the Report), was completed in March 1992.

Criminal law

423. By the time the previous Government issued its response to the Report in 1995, it had either implemented or was in the process of reviewing most of the ALRC recommendations relating to criminal law and procedure.

424. The following is an outline of some special measures taken at the Commonwealth level to assist groups who may be disadvantaged because of race or ethnic origin in accessing the legal system which complement existing criminal law and other protection for all Australian citizens.

425. Part 1C of the Crimes Act 1914 (Cth), which was enacted in 1991, provides safeguards for persons who are "under arrest" for Commonwealth offences or for more serious offences under the law of the Australian Capital Territory and includes specific safeguards for Aboriginal and Torres Strait Islander people. "Arrest" is defined very broadly in the Act and covers people in the company of investigating officials who, while not under formal arrest, believe that they would not be allowed to leave if they chose to do so.

426. The Act requires the cautioning of suspects in these circumstances in a language that they understand and the provision of information to arrested persons on their right to contact a friend or relative and a lawyer and their right to have a lawyer present during questioning. There are additional safeguards for Aboriginal persons and Torres Strait Islanders, who are entitled to have a friend present at the interview (including a lawyer, a relative, an Aboriginal legal aid worker, or another person chosen by the arrested person). Furthermore, an Aboriginal legal aid organization must be notified of the person's arrest. Additional funding was provided to Aboriginal Legal Services, following the recommendations of the Royal Commission into Aboriginal Deaths in

Custody, to enable Aboriginal Legal Services to provide additional services such as being available for arrested Aboriginal and Torres Strait Islander people.

427. Generally speaking, any confessions or admissions made by suspects must be tape recorded where practicable. Where it is impracticable to record, the Act requires a written record of interview containing an admission or confession to be read back to the suspect, who is to be given an opportunity to refute anything contained therein. This process must be tape recorded. In practice, video-recording is generally used and this provides the best possible evidence of a person's level of comprehension.

428. There is little common law protection for people who do not speak or understand English well and who as a result have made or appear to have made damaging admissions during police questioning. In the absence of specific statutory provision, there is no common law rule that such evidence is inadmissible. The court, of course, has a duty to ensure a fair trial and the general rules of evidence provide for the discretionary exclusion of evidence where it would be unfair to admit it or where it is in the public interest to exclude evidence obtained unfairly, unlawfully or improperly. There is no current information available as to how that discretion is applied in circumstances where an accused person made admissions without access to an interpreter.

429. Part 1D of the Crimes Act 1914 (Cth) (the Act), which was enacted in July 1998 and will commence in January 1999, provides safeguards for persons who consent to, or are ordered to, undergo a forensic procedure. Generally speaking, a forensic procedure involves obtaining a forensic sample from a person suspected of committing a Commonwealth criminal offence. The safeguards in the Act protect vulnerable suspects such as Aboriginals and Torres Strait Islanders, non-English speaking persons, children and incapable persons. A breach of the provisions designed to safeguard the rights of such suspects may render all evidence obtained from a forensic procedure inadmissible in court proceedings.

430. In respect of Aboriginal or Torres Strait Islander suspects, the Act provides that, before those suspects can be requested to consent to a forensic procedure, an Aboriginal legal aid organization must be notified if the suspect does not already have legal representation. An "interview friend" must also be present when an Aboriginal or Torres Strait Islander suspect is requested to undergo a forensic procedure, and during the conduct of a forensic procedure. An interview friend is defined as a relative or other person chosen by the suspect, the suspect's legal practitioner, a representative of an Aboriginal legal aid organization, or a person whose name appears on an interview friend list required to be maintained by the Minister for Justice and Customs. Where an Aboriginal or Torres Strait Islander suspect does not communicate fluently in English, an interpreter must also be provided. Finally, in deciding whether to order a forensic procedure, a magistrate or senior constable (a police officer of the rank of sergeant or above) must ask about, and then take into account, the cultural beliefs of Aboriginal and Torres Strait Islander suspects.

431. The Act also contains safeguards for non-English speaking suspects. Wherever the Act requires a suspect to be provided with information, this must be done in a language in which the suspect is able to communicate with reasonable fluency, including sign language or braille. Where effective communication requires the use of an interpreter, one must be provided by the police. As with Aboriginal or Torres Strait suspects, the Act also requires a

magistrate or senior constable, when deciding whether to order a forensic procedure, to have regard to the suspect's cultural background. That safeguard ensures that cultural sensitivities are taken into account in deciding to order, for example, a more intrusive forensic procedure.

Family law

432. With regard to family law, the Report had recommended that section 64(1)(bb) of the Family Law Act 1975 (Cth) should be amended to ensure that the desirability of the child's maintaining his or her links with the culture of each of his or her parents or guardian is taken into account in the decision making process. In 1995 the previous Government responded to this recommendation by repealing section 64(1)(bb) and adding section 68F(2)(f), which provides that, in determining what is in the child's best interests, the court must consider the child's maturity, sex and background (including any need to maintain a connection with the lifestyle, culture and traditions of Aboriginal peoples or Torres Strait Islanders) and any other characteristics of the child that the court thinks are relevant.

433. Also, given that in some communities pre-marriage agreements about property are made as a matter of course and are taken very seriously, the Report had recommended that pre-marriage contracts governing the distribution of property in the event of a dissolution of the marriage should be enforceable unless a court decides that enforcement would cause substantial injustice. Proposals for reforming the law regulating matrimonial property are currently before the Attorney-General for his consideration.

5.2. Interpreters and translation services

434. At the federal level, a special programme was undertaken to enhance access to interpreters for Aboriginal and Torres Strait Islander people. The Attorney-General's Department provided funds to improve access to justice for Indigenous Australians through the development of accredited Aboriginal and Torres Strait Islander language interpreter programmes. These programmes have increased the number and availability of Aboriginal and Torres Strait Islander language interpreters within the courts.

435. The Attorney-General's Department also provided funds for the development of interpreter awareness programmes for judges, tribunal members and staff of federal courts and tribunals. The aim of the programmes was to provide judges, members and court staff with information and skills on how to work more effectively with interpreters. A training package for judicial officers, comprising a video, handbook and reference guide, has been produced. These materials have been distributed widely to courts and tribunals.

Interpreters during police questioning

436. The Crimes Act 1914 provides a right to an interpreter for a non-English-speaking person during police questioning. Once the investigating official has reasonable grounds to believe the accused person cannot communicate in a reasonably fluent manner, questioning and investigation cannot begin or continue until an interpreter is present. Provision has been made for the collation of a list of people who are willing to help or to act as interpreters for Aboriginal persons or Torres Strait Islanders who are under arrest or investigation for Commonwealth offences.

437. There are also legislative provisions in South Australia, Victoria and the Australian Capital Territory requiring use of interpreters during police questioning. In South Australia, people under arrest who are not fluent in English are entitled to be assisted by an interpreter in police questioning. A police officer may not question such a person, until the person has been informed of the right to an interpreter and given an opportunity to contact a friend, relative or lawyer. In Victoria, the police are required to arrange for an interpreter before questioning any person in custody who does not sufficiently understand English. In the Australian Capital Territory, there is a right to an interpreter in the investigation of summary offences, complementing the provisions in the Commonwealth Act, which are described above, for interpreters in the investigation of indictable offences. The Queensland Police Department is currently formulating a written policy regarding the use of interpreters when Aboriginal or Torres Strait Islander people are interviewed.

Interpreters in courts

438. The Australian Government has taken steps to enhance access to interpreters in federal proceedings. The Evidence Act 1995 provides all witnesses with an entitlement to give evidence through an interpreter unless they are able to understand and express themselves in English sufficiently to understand questions and give adequate replies. The entitlement to an interpreter applies to all proceedings in federal courts and in Australian Capital Territory courts. The right does not extend to allowing accused persons to have the entire proceedings interpreted. In any event, because nearly all Commonwealth criminal matters are currently tried in state and territory courts, the provisions of the Act do not apply to most criminal proceedings under Commonwealth laws. Further to these measures, the Commonwealth has given additional funding to federal courts and tribunals to meet the cost of interpreters.

439. The Family Court provides interpreters free of charge to parties during counselling or mediation sessions. An interpreter is provided if a party requests one or if a counsellor or mediator considers that a party cannot adequately understand and speak English. The Family Court has also taken steps to identify its bilingual staff in the counselling/mediation section and those staff will, upon request, act as assistants to the counsellor/mediator for language or cultural matters. Federal Court staff arrange for interpreters for any parties or witnesses who would be disadvantaged by inadequate knowledge of English and who have not already arranged for an interpreter. Registry staff also offer assistance to people with limited English who attend at Federal Court registries, either by using the skills of multilingual staff or arranging for access to the Telephone Interpreter Service.

440. Some states have enacted legislation to guarantee a right to an interpreter. For example, in the Australian Capital Territory, a party or a witness is entitled to be assisted by an interpreter if unable to communicate effectively in English. In Victoria, there is a statutory right to an interpreter for witnesses and parties in proceedings in the Children's Court and in Magistrates' Court proceedings for defendants charged with an offence punishable by imprisonment, if the court is satisfied that the person does not have adequate understanding of English. In South Australia, witnesses in any action, trial or matter have the right to an interpreter if English is not their native language and they are not reasonably fluent in English. New South Wales also provides for interpreters in courts (see para. 133).

441. The proposal that uniform legislation be enacted to ensure a right to an interpreter for non-English-speaking persons has been under consideration in the Standing Committee of Attorneys-General. Further work is dependent upon the development of a national system for the registration and accreditation of interpreters, a matter which is being considered by Ethnic Affairs Ministers.

Interpreters in tribunals

442. There is no statutory right to an interpreter in federal tribunals. However, a number of tribunals have policies or guidelines under which interpreters are generally provided where needed. The Administrative Appeals Tribunal (AAT) provides an interpreter to any applicant or respondent who requests the assistance of an interpreter. Interpreters may be used during the pre-hearing stages for the purposes of "Outreach" (provision of information to unrepresented parties in relation to AAT procedures), pre-hearing conferences, mediations and hearings. The AAT policy is to arrange for the use of interpreters who are accredited by the National Authority for the Accreditation of Translators and Interpreters (NAATI). In languages for which there is no NAATI accreditation, a NAATI certificate of recognition must be provided. Where necessary, AAT will organize for documents to be translated. AAT provides all of its information products (pamphlets, videos and audio tapes) in 10 community languages. In addition information products designed for particular jurisdictions (for example criminal deportation) are also available in relevant community languages. Guidelines of the Social Security Appeals Tribunal recognize the need for and importance of interpreters and the manner in which interpreters are to be provided. Applicants can indicate their wish to have an interpreter in the Tribunal on their application form. Applicants are asked again when they telephone to make an appointment whether they require an interpreter. There is a statutory basis, although not an entitlement, for the provision of interpreters in the Refugee Review Tribunal (RRT). The presiding member of the RRT may direct that communication with a person appearing before it be through an interpreter, where the person is not proficient in English. The RRT in practice provides interpreters wherever they are requested or appear to be needed.

443. Following amendments to the Migration Act 1958 in 1995, new provisions took effect in relation to the use of interpreters by the IRT. According to the new provisions a person appearing before the IRT to give evidence may request the Tribunal to appoint an interpreter for the purposes of communication between the Tribunal and the person. If such request is made by a person, the Tribunal must comply unless it considers that the person is sufficiently proficient in English. However, if the Tribunal considers that a person appearing before it to give evidence is not sufficiently proficient in English, the Tribunal must appoint an interpreter, even though the person has not made a formal request for an interpreter to be appointed.

Translating and Interpreting Service

444. The Commonwealth Government's Translating and Interpreting Service (TIS) continues to make a significant contribution to Commonwealth, state and territory governments' delivery of access and equity principles that are now encompassed by the Charter of Public Service in a Culturally Diverse Society. TIS assists Australian residents whose English language skills are limited to gain equitable access to services provided by government and community agencies. In particular, TIS provides telephone interpreting services, 24 hours a day,

seven days a week, by way of one nation-wide local call charge telephone number. Face to face is also available during business hours, as well as out of hours for emergency services. Notably, TIS interpreting services are provided free of charge to certain community-based non-profit organizations, as well as to medical practitioners for medical consultations covered by Medicare.

445. Many government agencies make use of TIS document translation services to publish information material for clients in languages other than English. In addition, to facilitate successful settlement, TIS provides certain new settlers with extract translations of their important settlement-related documents, free of charge.

5.3. Equal access to employment

Workplace Relations Act 1996

446. Federal workplace relations legislation has assisted in providing protection against discrimination in the workplace for the period covered by this report.

447. The Industrial Relations Act 1988 included provisions requiring the Australian Industrial Relations Commission to have regard to the principles underpinning the Racial Discrimination Act 1975. In 1994, the Industrial Relations Act 1988 was amended to include a range of anti-discrimination provisions, amongst other things. The amendments included in the principle object of the Act the aim of helping to prevent and eliminate discrimination in employment on various grounds, including race, colour, sex and national extraction, and introduced substantive provisions relating to discrimination in awards, agreements and dismissals. The Act was substantially revised and renamed the Workplace Relations Act 1996. Provisions on discrimination in awards, agreements and dismissals were retained, with some modifications.

448. The Workplace Relations Act 1996 (the WR Act) has operated in Australia since the start of 1997. The importance of preventing discrimination is stressed in the principle object of the WR Act. The object refers to respecting and valuing the diversity of the workforce by helping prevent and eliminate discrimination on the basis of race and various other specified grounds (s.3(j)).

449. The principal object is complemented by provisions which require the Australian Industrial Relations Commission to take account of the principles embodied in three anti-discrimination Acts, including the Racial Discrimination Act 1975, concerning discrimination in relation to employment (s.93).

450. A range of provisions is intended to prevent and eliminate discrimination in awards. These provisions specifically require the Australian Industrial Relations Commission to have regard to the need to prevent and eliminate discrimination on the specified grounds in the performance of its award-making functions (s.88B(3)(e)).

451. The Australian Industrial Relations Commission is required to ensure that new awards, variations to awards and orders affecting awards do not contain provisions that discriminate on the specified grounds (s.143 (1c)(f)).

452. As part of an award simplification process, awards will be reviewed to ensure that they do not contain provisions that discriminate on the grounds specified above. If the Australian Industrial Relations Commission determines that an award does not meet this criterion, it may take whatever steps it considers appropriate to deal with the matter.

453. Section 88A of the WR Act outlines the objects required to be furthered, among others, by the Australian Industrial Relations Commission when performing its award-making functions. This includes that awards are suited to the efficient performance of work according to the needs of particular workplaces or enterprises (s. 88A (c)). This provides scope for awards to be made more relevant and suited to the needs of workers with diverse needs, for example, by providing scope for leave to be taken flexibly for cultural or family reasons (s. 89A (2)(g)). The WR Act also aims to ensure that awards are made in a way that encourages the making of agreements at the enterprise level (s.88A(d)), thereby encouraging agreements to be made which are relevant and suited to the needs of workers with diverse needs.

454. The WR Act also includes provisions designed to prevent and eliminate discrimination in both certified agreements and Australian Workplace Agreements (AWAs).

455. For certified agreements, whether made between employers and unions, or directly between employers and employees, the Australian lndustrial Relations Commission must refuse to certify an agreement if the agreement discriminates against an employee on any of the specified grounds (s. I 70LU(5)).

456. For AWAs made directly between employers and individual employees, employers must ensure that the agreement includes anti-discrimination provisions that are prescribed by the regulations. If the AWA does not include these provisions, it is taken to include them (s.170VG(1)). If an employee believes their AWA is discriminatory on the grounds of race, they may lodge a complaint with the Human Rights and Equal Opportunity Commission (HREOC).

457. A range of related provisions also helps ensure that agreements operate fairly and without discrimination. This includes, for certified agreements, the requirement for employers to have regard to the employees' particular circumstances and needs, including people from non-English speaking backgrounds (s 1 70LT(7)). For AWAs, agreements will not be approved where the agreement was not offered and is not proposed to be offered on the same terms to all comparable employees, where the employer acted unfairly or unreasonably in doing so (s. I 70VPA(e)). Also, agreements will not be approved unless the employer has explained the agreement to the employees concerned and they have genuinely consented to the AWA. (s. I 70VPA( 1 ) and (2)).

458. The Employment Advocate, who is responsible for, amongst other functions, approving AWAs, must have particular regard when performing his/her functions to the needs of workers in a disadvantaged bargaining position, for example from non-English speaking backgrounds (s.83 BB(2)(a)).

459. Under the WR Act, the termination of employment on any of the specified discriminatory grounds, including race, is unlawful (s. 1 70CK(2)(f)).

460. The Minister must report to Parliament on the effects that agreement-making has had on the employment (including wages and conditions of employment)

of disadvantaged groups of people, including those from non-English speaking backgrounds (s.358A (1)(d)).

The right to form and join trade unions

461. A number of provisions of the Workplace Relations Act 1996 (the WR Act) address discrimination on the grounds of membership or non-membership of a union. They give effect to the principles of freedom of association (the right to choose whether or not to join an employee or employer association) and equal treatment before the law.

462. The freedom of association provisions aim to ensure that employers, employees and independent contractors are free to join or not to join industrial associations (s.298A(a)) and are not discriminated against or victimized because they are, or are not, members of such associations (s 298A(b)).

463. An employer is prohibited from refusing to extend the terms and conditions of a certified agreement to any other employees who request it, and who would otherwise be covered by the agreement if they were members of the union that is a party to the agreement, or they were not members of a union (or of a particular union) (s. 170MDA).

464. In addition, Part XA of the WR Act will prevent employers from doing, or threatening to do, any of the following because of a person's membership or non-membership of a union:

Dismiss an employee;

Injure an employee in his or her employment;

Alter the position of an employee to the employee's prejudice;

Refuse to employ a new employee;

Discriminate against another person in the terms or conditions on which the employer offers to employ the other person. Section 298K provides similar protection to independent contractors.

465. Also, Part XA of the Act (s.298L) prevents an employer or other relevant person from treating an employee adversely (in any of the ways mentioned above), because the employee:

Refused to join in industrial action;

Refused to support an industrial agreement;

Applied for a secret ballot;

Is entitled to the benefit of an individual instrument;

Complained to a person having the capacity under an industrial law to seek compliance with the law; or

Participated in a proceeding, or gave evidence, under an industrial law.

States and territories
(See also under article 2 above)

New South Wales

466. The New South Wales Industrial Relations Act 1996 came into effect in September 1996 and requires that the Industrial Relations Commission of NSW, in the exercise of its functions, take into account the principles contained in the NSW Anti-Discrimination Act 1977. One of the Act's objects is to prevent and eliminate discrimination in the workplace and in particular to ensure equal remuneration for men and women doing work of equal or comparable value. The NSW Industrial Relations Commission is empowered on its own initiative or on application to review and rectify issues concerning discrimination in the workplace

467. One of the objects of the Industrial Relations Act 1996 is to encourage participation in industrial relations by representative bodies of employees and employers and to encourage the responsible management and democratic control of the bodies. The Act also provides that a person is entitled to be a member of an industrial organization but can be prevented from becoming or remaining a member by the organization acting under its rules, and that a person cannot be compelled to become or remain a member of an industrial organization.

South Australia

468. Since the submission of the previous report, South Australia has introduced the Industrial and Employee Relations Act 1996. The Act provides protection for employees involved in enterprise agreements in South Australia from being discriminated against on a number of grounds, including that of race. One of the objects of the Act is to help prevent and eliminate discrimination in accordance with state and Commonwealth law.

Queensland

469. Prevention and elimination of discrimination is recognized in the principal object of the Queensland industrial relations legislation, the Workplace Relations Act 1997 (the WR Act 1997). The principal object of the Act states that it is to provide a "framework for cooperative workplace relations that supports economic prosperity and welfare by . . . respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination "

470. Discrimination is defined in the WR Act 1997 to include any grounds of discrimination under the Queensland Anti-Discrimination Act 1991, which prohibits discrimination in work and work-related areas (Part 4, Division 2).

471. The WR Act 1997 requires the Queensland Industrial Relations Commissioner to take account of the Anti-Discrimination Act 1991 relating to discrimination in employment when exercising its jurisdiction (s. 280).

472. Non-discriminatory provisions included in the WR Act 1997 cover the award system, certified agreements and Queensland Workplace Agreements. The WR Act 1997 requires that the effect of a proposed agreement be explained to particular groups of employees in an appropriate way, having regard to their particular needs, including persons from non-English speaking backgrounds, to ensure that

they can participate fully in the process of collective bargaining without disadvantage (s 25(5)). Similarly when exercising the functions of its position, the Employment Advocate must have regard to the needs of workers in a disadvantaged bargaining position, including people from a non-English speaking background (s 372(2)(a)).

473. The WR Act 1997 protects employees from unlawful dismissal, i.e. for a reason that is invalid (s.217). Discrimination which would contravene the Queensland Anti- Discrimination Act 199I is an invalid reason under the WR Act 1997 (s 21 7(b)(xi)).

474. In Queensland, the Industrial Organizations Act 1997 provides for freedom to join or not to join an industrial organization. It prohibits the refusal of membership to an employer or employee organization except on specified grounds related to type of employment, compliance with the organization's rules and bad character.

Victoria

475. Key Victorian legislation which supports the state's commitment to non-discrimination includes the Equal Opportunity Act 1995, which came into operation on 1 January 1996. This legislation prohibits discrimination on the basis of a number of attributes, including race and industrial activity. Discrimination is unlawful where it occurs in a person's public life, including in employment.

476. Victoria referred certain of its industrial powers to the Commonwealth effective from 1 January 1997. Coverage is provided under the Workplace Relations Act 1996. Provisions of this Act are referred to above in relation to the Commonwealth. Prior to this date, protection of workers was afforded by the Victorian Employee Relations Act 1992, which provided protection of rights to freedom of association. Protection from discrimination in employment and from workplace harassment (under the terms of the Victorian Equal Opportunity Act 1995) is still provided under Victorian jurisdiction. Industrial activity is a protected attribute under section 6(c) of the Equal Opportunity Act 1995.

Initiatives for migrant job seekers

477. In December 1993, the Migrant Service Improvement Strategy was launched to improve employment opportunities for migrants, especially the long-term unemployed. The primary objective of the Strategy was to reduce the level of migrant unemployment and forestall the flow of migrants into long-term unemployment by addressing the additional barriers faced by people from non-English-speaking backgrounds in search for work.

478. The Strategy had three major elements: the establishment of a national network of Migrant Liaison Officers (MLOs) the establishment of Migrant Advisory Committees (MACs) and improved interpreter services.

479. The MLOs established links with local ethnic communities to better understand these communities' special labour market needs and provide information about Department of Employment, Education, Training and Youth Affairs (DEETYA) employment services and programmes. MLOs also liaised and consulted with relevant Commonwealth, state and territory government and local government agencies and community organizations to facilitate coordinated

service provision for migrants in the labour market. They provided a focal point for migrant issues at the operational level. The MLOs monitored access to programmes and services and helped departmental staff develop skills to deal effectively with clients from non-English-speaking backgrounds.

480. The MACs were primarily concerned with improving communication with the ethnic communities, understanding their needs and providing feedback on DEETYA services to operational management.

481. DEETYA provided interpreter services to clients with English language difficulties through bilingual officers, the Translating and Interpreter Service of the Department of Immigration and Multicultural Affairs and other providers, as appropriate.

482. In addition, assessments and English language, literacy and other preparatory training were also available under the Job Seeker Preparation and Support (JPS) Programme and its predecessor the Special Intervention Programme (SIP) to help raise the skills of job seekers so they could compete for employment. Especially disadvantaged job seekers were immediately eligible for assessments under SIP, with other assistance being available after one month's unemployment. (Eligibility for assistance for other job seekers commenced after three months' unemployment.) The unemployment duration eligibility requirement was removed when JPS commenced in October 1996 and job seekers became immediately eligible for assistance, subject to need and other eligibility considerations.

483. From 1 May 1998 the Government set up Job Network, a fully competitive market for employment services. Job Network will be funded by "cashing out" most of the funding previously provided for labour market programmes. Job Network is a new, national network of private, community and government organizations which have been contracted by the Government to find unemployed people, particularly the long-term unemployed, jobs. Employment National, the corporatized public provider and the successor to the Commonwealth Employment Service is one of the more than 300 Job Network organizations. Job Network organizations will offer more flexible and tailored assistance to job seekers depending on their level of need. Job Network organizations will canvass employers for jobs and match individual job seekers to vacancies.

484. The Government will monitor referrals to Job Network organizations to ensure that the share of assistance to special groups, such as people from a non-English-speaking background and Aboriginal and Torres Strait Islander peoples, is maintained. The Government will also monitor the performance of Job Network organizations, including the employment outcomes achieved by people from special groups.

485. The continuation of the employment strategies element of the Training for Aboriginals and Torres Strait Islanders Programme will realize an effective approach to Indigenous employment assistance in urban, rural and remote Australia for Aboriginal and Torres Strait Islander job seekers in the private and public sector. In recognition of the special needs of Indigenous job seekers, specialist Indigenous Strategies Branches, located in each DEETYA state and territory office with divisional outlets in Townsville, Alice Springs and Orange, will administer this Programme.

486. During the tendering process for Job Network, organizations tendering to provide services in regions where there were high proportions of special client groups (for example, people from non-English-speaking backgrounds, or Aboriginal and Torres Strait Islander peoples) were required to demonstrate how they would help those groups. As well, tenderers could choose to concentrate their tender on specific client groups.

487. As part of their contract, Job Network organizations are required to ensure that they will provide services in a way that is free from any unlawful discrimination, including discrimination which could contravene the Racial Discrimination Act 1975.

488. Also as part of their contract, Job Network organizations are obliged to comply with the Employment Services Industry Code of Conduct. This states, among other things, that organizations should ensure that:

> Premises are appropriate for job seekers and employers with special needs, including, for example, signage being provided for people from non-English-speaking backgrounds; and
>
> Job seekers are to be treated fairly and ethically. This includes serving all job seekers and employers without favour or prejudice and referring job seekers to employers on the basis of suitability for the job, not on the basis of irrelevant personal characteristics.

489. In this context, the DEETYA is implementing a revised Employment Services Strategy for Migrants to deliver on the Government's comm tment to migrant clients under Job Network. This Strategy includes establishing a network of Migrant Liaison Officers, based in DEETYA state/territory offices, who will monitor migrant job seekers' access to employment services and outcome rates and liaise with a range of ethnic organizations, service providers and other Commonwealth and state agencies.

490. In response to the Australian Language and Literacy Policy, in 1992 the Advanced English for Migrants Programme was established as a DEETYA labour market programme, under which advanced English as a second language training is provided to help migrant job seekers overcome individual barriers to participation in vocational training or obtain employment. This programme will be retained as a specific Commonwealth programme and will not be "cashed out", since it addresses the English language needs of migrant job seekers. Funding of approximately $5.3 million was provided in 1998 to assist approximately 3,500 participants.

Migrant Workers' Participation Scheme

491. The Migrant Workers' Participation Scheme was part of the broader Workplace Reform and Best Practice Programme and was administered by the Commonwealth Department of Industrial Relations from late 1990 to 1994 . The Scheme promoted social justice issues as part of workplace reform and was designed to provide assistance to organizations in the form of grants to promote a wider understanding of workplace reform issues by migrant workers, especially those from non-English-speaking backgrounds, and to enhance their participation in the process of workplace reform.

492. Following a review of its objectives, and amendments to the Commonwealth industrial relations legislation in 1993, the Workplace Reform Programme was refocused as the Workplace Bargaining Programme in May 1994. The Migrant Workers' Participation Scheme was subsumed into the Workplace Bargaining Programme. The Workplace Bargaining Programme ceased in July 1996.

5.4. Access and equity

Australian Public Service

493. The access and equity strategy has been a significant administrative initiative to guarantee equal access to government services irrespective of cultural background. The access and equity strategy has been an important element in meeting the commitment to social justice contained in the 1989 National Agenda for Multicultural Australia. While implementation of the strategy has helped to ensure equitable service delivery for all Australians, in the past it has been perceived as a means to secure special services to migrants and as an add-on to normal programme management. There were also concerns at the consistency and quality of data regarding disadvantage provided by the related non-English-speaking background identifier.

494. In 1996 the access and equity strategy was recast as A Charter of Public Service in a Culturally Diverse Society. While partially a response to the problems identified above, this development also reflected a broader commitment to customer focus by government service providers. It was a recognition that Australia's diverse client-base has diverse needs, and that government service providers ought to be aware of these needs and be sufficiently flexible and responsive to service them. The problems with data collection are being addressed through the development of a more suitable designator for measuring the link between cultural diversity and disadvantage.

Newly arrived migrants - Access to English language programmes

495. Australia has a long history of providing quality services to newly arrived immigrants to ensure their effective settlement in Australian society. During the reporting period, a number of changes have occurred which have impacted on the manner in which services are delivered to new migrants, including the greater use of competitive tendering in government programmes. Funding for delivery of English language training to newly arrived migrants has been one programme which has been subject to competitive tendering.

496. The Australian Government has introduced these arrangements in order to bring significant benefits to clients, including client choice, more flexible delivery options, greater opportunities to learn English in community settings and better learner pathways.

497. The Government has an expectation that highly skilled independent migrants will research their employment prospects in Australia before they make a decision to migrate. Part of the role of DIMA is to prospective migrants with information which encourages them to research their employment prospects and lifestyle choices when they are considering Australia as a potential migration destination. For example, information products have been updated since May 1998 to incorporate more information on the two-year waiting period for social security, on employment conditions and on the cost of living in Australia. The

DIMA information products include DIMA visa grant letters and standard information forms.

5.5. Social security

General

498. The Australian social security system, in corporating a range of income support payments, is universal in application and does not discriminate against people of a different race. A person's eligibility for payment of an age pension or any other income support payment, such as disability benefit, unemployment benefit or family and carer's allowance, is dependent upon meeting a number of stipulated criteria that are devoid of any reference to racial origin. The primary determinant for eligibility rests upon the definition of Australian residence and the application of an income and assets test. The major premise underlying access to any form of social assistance within Australia is that of "demonstrated need" whereby every effort is made to ensure that any person in need, irrespective of racial origin, is able to access the system on an equitable footing.

499. All Australian jurisdictions have in place legislative and administrative measures to prevent and penalize discriminative practices across all areas of service delivery, including social programmes. Australian governments have also established a range of supplementary measures to enhance access to government services by Indigenous Australians. For example, an important initiative has been an educative programme to improve the access of Indigenous social security recipients to the social security appeals system.

500. An Australian resident is defined as a person whose normal place of residence is Australia and who is an Australian citizen or has permanent resident status. Except for refugees, a person must have been an Australian resident for a total of 10 years before the age pension is payable.

501. By way of an example, legislative provisions in relation to the age pension seek to provide an adequate, publicly funded safety net payment to older people unable to provide fully for themselves in retirement. Introduced in 1909, it is a flat rate public pension available to all who meet the residency requirement and who are not excluded by income and assets testing arrangements. Its primary objective is poverty alleviation.

502. From July 1992, by virtue of the Superannuation Guarantee (Administration) Act 1992, any Australian resident who is employed may accumulate savings for his/her retirement through concessionally taxed compulsory saving by way of the Superannuation Guarantee Charge for private pensions (superannuation), which requires contributions from employers and employees. Any Australian resident may also make voluntary contributions towards private pensions (in addition to the compulsory contributions mentioned above), which also attract the full range of tax concessions, and other private savings.

Migrants

503. The residence rule can be modified under shared responsibility social security agreements which Australia currently has with a number of migrant source countries, for example Austria, Canada, Cyprus, Ireland, Italy, Malta, the Netherlands, Portugal and Spain. The rule can also be modified by the older

style "host-country" social security agreements Australia has with the United Kingdom and New Zealand.

504. In March 1997 Australia introduced a legislative requirement that imposed a waiting period of two years on newly arrived residents before many social security payments become accessible. Some of these payments previously attracted a six-month waiting period.

505. Refugees, humanitarian migrants and their family members are exempt from the waiting period and so are, for most social security payments, partners and dependant children of Australian citizens and long-term residents.

506. Section 4 of the Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997, which contains the legislation introducing the waiting period, provides that the provisions of the Racial Discrimination Act 1975 are intended to prevail over the provisions of that Act and nothing in the provisions of that Act authorizes conduct that is inconsistent with the provisions of the Racial Discrimination Act 1975.

507. Although it was the opinion of the Australian Senate's Legal and Constitutional Affairs Standing Committee that the original bill introducing the legislation did not discriminate on the grounds of race or contravene international obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, section 4 was added to the Act to avoid any doubt on the matter.

Indigenous Australians

508. In developing social programmes, the relevance and impact of cultural differences are routinely considered and accommodated within government social programmes to ensure that equality of outcomes is achieved. For example, the greater labour market disadvantages of unemployed Indigenous people are taken into account in applying culturally-sensitive activity tests through the social security system.

509. All levels of Australian government are collaborating to achieve better housing outcomes for Indigenous Australians. In April 1997, Commonwealth and State Housing Ministers committed themselves to establishing independent indigenous decision-making bodies that would administer all Commonwealth and state housing programmes, and improve planning and service delivery. As at June 1998, new indigenous housing bodies had been established in Western Australia and the Northern Territory and, since June 1998, a further two bodies have been established in New South Wales and South Australia. Arrangements are being finalized for the establishment of indigenous housing bodies in the remaining three states and territory.

510. A particular concern for governments has been the establishment of a nationally consistent indigenous housing policy. In urban communities, the priority has been to ensure that Indigenous people have affordable and equitable access to all mainstream housing options. In remote and isolated areas, the focus has been on providing safe and suitable housing and health related infrastructure that is built and maintained to a national standard. As at June 1998, a national framework for housing design and maintenance was under development, and is now nearing finalization.

511. Since June 1998, Australian governments have been developing a nationally consistent approach to the collection of data relating to housing and infrastructure. A national data agreement and minimum data set will assist in the allocation of resources on the basis of quantifiable need. Governments are also working with the indigenous community-housing sector to achieve effective housing and tenant management practices, thereby extending the lifespan of dwellings in remote communities. In addition to the development of a national training strategy for indigenous community housing managers, another important initiative has been the introduction of a voluntary rent deduction scheme. The scheme, which commenced in late 1998, has enabled housing managers to improve rent revenue that can be used in maintaining and improving housing, particularly, in remote and isolated areas.

## Article 6

## Effective protection against racial discrimination

### 6.1. Complaint handling mechanisms

512. The RDA makes it unlawful to discriminate on the grounds of race, colour, descent, or national or ethnic origin in a number of areas (see the discussion in relation to article 2, above). The RDA provides a mechanism for handling complaints of unlawful discrimination under that Act, and for ensuring that persons affected by such discrimination obtain appropriate remedies (similar mechanisms exist under the Disability Discrimination Act 1992 (DDA) and the Sex Discrimination Act 1984 (SDA) for handling complaints of unlawful discrimination under those Acts).

513. A complaint is first made to HREOC, which refers the complaint to the Race Discrimination Commissioner in the first instance. The Commissioner may decide not to inquire into the act or, if the Commissioner has already commenced to inquire into the act, not to continue to inquire if the Commissioner is satisfied that the act is not unlawful under the RDA; the Commissioner is of the opinion that the person aggrieved by the act does not desire that the inquiry be made or continued; a period of more than 12 months has elapsed since the act was done; or the Commissioner is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance. A person may seek a review by the President of HREOC of the Commissioner's decision not to inquire or continue to inquire. If the complaint proceeds beyond this point the Commissioner attempts to reach a conciliated settlement between the complainant and the alleged discriminator. If a solution acceptable to both parties cannot be achieved, the Commissioner may refer the complaint back to HREOC for a hearing. After a hearing, HREOC may make findings as to whether unlawful discrimination has occurred and offer a wide range of remedies, including the payment of financial compensation to the complainant. This determination by HREOC is not, however, binding between the parties.

514. If the discriminator does not comply with HREOC's determination, the complainant may commence proceedings in the Federal Court for enforcement of the determination. The Federal Court will hear the matter afresh and will offer its own findings and remedies, which may or may not reflect those of HREOC.

515. An overview of racial discrimination complaints mechanisms in the states can be found under article 2 above.

Complaints under the Racial Discrimination Act, 1975

516. Complaints under the Racial Discrimination Act received by the HREOC Central Office totalled 154 in 1994-95 (the racial hatred amendments were in force for nine months of 1994-95), 197 in 1995-96 and 375 in 1996-97. In 1997-98, 197 complaints were received by the HREOC Central Office, a decrease from the 1996-97 figure.

517. The RDA, as federal law, is also available to litigants in the ordinary courts as a means to challenge racially discriminatory executive action at all levels of government and racially discriminatory legislation of Australia's state or territory parliaments.

518. In the relevant period, the RDA was cited in over 36 cases in the course of ordinary litigation.

Complaints under the Racial Hatred Act, 1995

519. The Racial Hatred Act, 1995 commenced operation on 13 October 1995. As of 30 June 1996, 63 complaints had been received. In the 12 months July 1996-June 1997 the Commission received 186 racial hatred complaints, 98 of which were finalized.

520. Only five decisions have been made under Part IIA of the RDA. Four are determinations of the HREOC and one is an appeal from a decision of the HREOC to the Federal Court. There is no authoritative decision in Australian law that deals with the meaning of racial hatred.

521. The two main decisions made under the section are that of the Human Rights and Equal Opportunity Commission (Sir Ronald Wilson) in Bryant v. Queensland Newspapers, 15 May 1997 dealing with the meaning of the words offensive "in all the circumstances" and the decision of the Federal Court of Australia in Executive Council of Australian Jewry v. Olga Scully, 13 February 1998 concerning standing to lodge a complaint.

6.2. Brandy v Hreoc

The effect of the High Court's Brandy decision

522. In Brandy v Human Rights and Equal Opportunity Commission (1995) 183 CLR 245, the High Court was asked to consider the constitutional validity of the previous enforcement regime, whereby determinations of HREOC were registered in the Federal Court of Australia. If, within a specified period, the determinations were not challenged and reviewed by judges of the Federal Court, they would operate as orders of that Court.

523. The High Court found that this enforcement regime infringed the constitutional principle of the separation of judicial and executive powers, which is enshrined in chapter III of the Federal Constitution. Under the Constitution, an administrative body cannot validly exercise the judicial power of the Commonwealth. The High Court found that, once they had been registered with the Federal Court and were operating as orders of that Court, determinations of HREOC - an administrative body - were purporting to operate as judicial decisions. For this reason, the legislation which established the enforcement regime was invalid.

524. The effect of the High Court's decision was to leave determinations of HREOC unenforceable. As an interim solution, the Commonwealth Government enacted legislation to restore the original enforcement regime, which is described above. This, however, will involve the complainants undergoing two hearings of the same matter - once before HREOC itself and then again before the Federal Court - with all of the attendant costs, both financial and non-financial.

The Federal Government's response to the Brandy decision

525. The Federal Government's response to the High Court's Brandy decision formed the first phase of a process of reorganizing and reforming HREOC. In December 1996, the Federal Attorney-General introduced into Federal Parliament the Human Rights Legislation Amendment Bill 1996 (now renamed the Human Rights Legislation Amendment Bill (No. 1) 1998). The Bill lapsed when Parliament was prorogued for the 1998 election and has now been reintroduced in the current Parliament

526. Under amendments proposed in that Bill, complaints of unlawful discrimination under the DDA, the RDA and the SDA would still be able to be lodged with HREOC, which would have the function of investigating and attempting to conciliate the complaints. Responsibility for the effectiveness and timeliness of complaint handling would rest with the President of HREOC. Where a complaint is not able to be conciliated by HREOC, the President would have the power to terminate the complaint.

527. Complaints terminated on this ground, or on a number of other grounds set out in the Bill, would be able to proceed to the Federal Court for hearing and determination. The Federal Court would be expected to perform its functions in this regard with a minimum of formality and technicality. The members of HREOC (other than the President) would be able to seek leave to appear in, and assist, the Federal Court in relation to complaints of unlawful discrimination. Once the Court has determined the matter, it would be able to make any orders it sees fit, including that financial compensation be paid to the complainant. This Bill is currently awaiting passage in the Federal Parliament.

6.3. Human Rights and Equal Opportunity Commission

528. The Federal Government announced in September 1997 the second phase of its reorganization of the Human Rights and Equal Opportunity Commission. This phase of the process would see HREOC renamed the Human Rights and Responsibilities Commission (HRRC), with a streamlined structure and more focused principal functions. The executive structure of HRRC would consist of a president and three deputy presidents, each of whom would have a responsibility to protect and promote the human rights of all Australians. Each of those deputy presidents would also have responsibility for a specific subject area: one would deal with social justice and race, one would handle sex discrimination and equal opportunity and one would have responsibility for human rights and disability.

529. Aside from its complaint handling role, HRRC's principal functions would centre around education, dissemination of information on human rights and assistance to business and the community - for example, through the development of guidelines to assist people to comply with anti-discrimination legislation. As mentioned above, each deputy president would also have the function of assisting the Federal Court, as amicus curiae, in proceedings arising from

unlawful discrimination complaints under federal anti-discrimination legislation.

530. The Human Rights Legislation Amendment Bill (No. 2) 1998, which would implement the structural changes to the Commission, was introduced into the Federal Parliament on 8 April 1998. The Bill lapsed when Parliament was prorogued and is currently awaiting passage in the Federal Parliament.

531. There has been some criticism by a number of indigenous leaders, including the former Commissioner, Mr Michael Dodson, that there is no legislative requirement for the position of Aboriginal and Torres Strait Islander Social Justice Commissioner to be held by an indigenous Australian. In the process of examining the proposals for the restructuring of HREOC, the Government considered this criticism.

532. The Government does not consider it appropriate to prescribe in the legislation specific qualifications for the various deputy president positions. Instead, the Government considers that each of the deputy presidents should have similar core skills, knowledge and experience, to enable the Commission to make the most efficient use of its resources in performing its statutory functions.

533. The Government nevertheless recognizes the importance of ensuring that the persons appointed to the various deputy president positions possess skills and knowledge relevant to their designated responsibilities. For this reason the proposed legislation would require that appointees to the deputy president positions have "appropriate qualifications, knowledge or experience".

534. In considering persons for appointment to a particular deputy president position, the Government would take into account the responsibilities of the position in evaluating the appropriateness of those persons' qualifications or experience. Thus the indigenous social justice responsibilities of one deputy president position would clearly be a relevant factor in deciding whom to appoint to that position.

## Article 7

### 7.1. ATSIC publications

535. ATSIC produces a wide range of documents for the purposes of educating the broader community about Aboriginal and Torres Strait Islander peoples.

536. In February 1998 ATSIC published As a Matter of Fact: Answering the Myths and Misconceptions about Indigenous Australians.

537. Each section of the publication takes as its starting point one of the common misconceptions or resentments concerning Aboriginal and Torres Strait Islander peoples or government programmes of assistance. It presents facts and figures and interpretations from an Indigenous perspective to show why these perceptions are in fact "myths". This document can be purchased at low cost and has been widely distributed to the general community.

538. The Office of the Minister for Aboriginal and Torres Strait Islander Affairs has also published a revised edition of Rebutting the Myths. The booklet deals with some of the disturbing myths and untruths that circulate about

Aboriginal and Torres Strait Islander peoples and the administration of Indigenous affairs.

539. Topics covered in Rebutting the Myths include:

Funding and accountability in Indigenous affairs;

The role of ATSIC;

Government allowances;

Access by Indigenous peoples to education and housing programmes;

Employment and Indigenous peoples' attitude to work; and

Native title claims.

7.2. HREOC publications

540. To ensure progress is made towards addressing discrimination issues in Australia the Human Rights and Equal Opportunity Commission and the Race Discrimination Commissioner have been granted a number of functions under sections 20 and 21 of the RDA. The Race Discrimination Commissioner has the function of developing, conducting and fostering research and educational programmes to promote the provisions and purpose of the Racial Discrimination Act. The Commissioner takes an active role in conducting research enquiries and significant results have been achieved in a number of key areas.

National Community Relations Strategy

541. The National Agenda for Multicultural Australia, released by the Prime Minister in July 1989, contained a commitment to develop and implement a programme to foster and promote awareness of the importance of harmonious community relations. As a result, the Commission participated in a broad-based government working group to develop a national Community Relations Strategy, the objectives of which included the reduction of systemic, as well as direct, discrimination against people of different race, ethnicity, religion, culture or language. In undertaking this task, the working group drew extensively on the Commission's research in the National Inquiry into Racist Violence released in 1991.

542. The seven projects initiated under the Community Relations Strategy were: Different Colours, One People; Real Estate Code of Practice; Tracking Your Rights; Unlocking the System; Workplace Project; Data Collection on Racist Motivation for Crimes, and a Training Package for Counsellors.

543. The Commission has engaged in an extensive array of projects and inquiries during the six year span of this reporting period. The following highlights some of those projects.

The Different Colours, One People campaign

544. The 1992 Different Colours, One People anti-racism campaign was directed specifically at young people. It was widely acclaimed for its lively and effective style, using high profile people from the music, television and

sporting worlds, who were admired by young people, to provide role models to actively combat racism. Different Colours One People was promoted widely by the Commission and implemented by Departments of School Education throughout Australia. The Living in Harmony Campaign

The Living in Harmony campaign

545. The Living in Harmony anti-racism campaign was launched by the Government in August 1998. The campaign builds upon the unity of Australian society and re-emphasizes that there is no place for racism in Australia. The centrepiece of the campaign is a community grants programme to make available funding for organizations able to develop projects to promote harmony between people and groups of different cultural backgrounds. In addition, there will be a series of partnerships between the Federal Government and key organizations from areas of national significance to generate better understanding, respect and cooperation among people of different backgrounds.

National Community Education and Public Information Strategy

546. Following the enactment of the Racial Hatred Act in late 1995, the Commissioner implemented a National Community Education and Public Information Strategy. The objectives of this strategy were to raise public awareness about the rights and responsibilities under the racial hatred amendments, promote racial tolerance and address fears that racial hatred legislation constitutes a significant constraint on free speech. Specific strategies targeted the following areas: non-English-speaking background communities, to make members more aware of their rights and responsibilities under the new amendments; the National Aboriginal and Torres Strait Islander Community Education Programme (NCEP); those working in the media, with a campaign including the production of The Racial Hatred Act: A Guide for People Working in the Australian Media; the general public, with the Face the Facts booklet, designed to dispel myths and misinformation; and youth, through the comic Takin' a Stand distributed nationally to schools and youth organizations during 1997 and a CD Rom The Making of Multicultural Australia, made available to tertiary students.

Promoting workplace awareness

547. Complaints related to employment constitute the clear majority of formal race complaints. For this reason the Commission has engaged in ongoing work on projects to address racism in the workplace by providing training and information on managing cultural diversity in both the public and private sector. For example, in 1994-95 the Commission undertook a Race Discrimination Act Awareness Project for Unions and Employers, focusing on informing workers of their rights to lodge complaints and informing employers of their responsibilities in minimizing the occurrence of discrimination in the workplace. In another initiative, during 1997 the Commission distributed draft guidelines for employers on the Racial Discrimination Act to over 800 employer organizations for comment. This has resulted in the production of an "Employment guidelines" package which will be completed by early June 1998.

7.3. Reconciliation

548. The establishment of the Council for Aboriginal Reconciliation (see under article 2, above) has been a significant measure taken in the combating of

prejudices which lead to racial discrimination and in the promotion of understanding, tolerance and friendship between Australia's ethnic groups.

549. The following is a list of resources prepared by the Council for Aboriginal Reconciliation:

Walking Together;
Council for Aboriginal Reconciliation Annual Report 1995-96;
Reconciliation Calendar 1997;
Week of Prayer Reconciliation flyer 1997;
Reconciliation Week flyer 1997;
The Path to Reconciliation - Issues for a People's Movement;
The Path to Reconciliation - Renewal of the Nation;
The Path to Reconciliation - The People's response;
Australian Reconciliation Convention flyer;
Australian Reconciliation Convention brochure;
Australian Reconciliation Convention poster;
Australian Reconciliation Convention sticker;
Australian Reconciliation Convention Awards flyer;
Making the Most of your Meeting;
Australian Reconciliation Convention - fringe events flyer;
Australian Reconciliation Convention Seminar handbook;
Australian Reconciliation Convention Programme;
Australian Reconciliation Convention Awards Programme;
The Inaugural Vincent Lingiari Memorial Lecture;
Human Rights Agreements and Documents of Reconciliation;
Indigenous People and the Constitution.

## Notes

1/ The Indigenous population referred to in this document covers those people who indicated they were of Indigenous origin on the Census of Population and Housing conducted by the Australian Bureau of Statistics in August 1996. Data in this profile is based on census counts as enumerated.

2/ Under the Native Title Act, applications may be made to the National Native Title Tribunal in relation to a number of native title matters: native title claims, native title compensation, future act applications, non-claimant applications and objections to the expedited procedure.

3/ On 14 December 1998, the Minister for Education, Training and Youth Affairs, the Hon. David Kemp, announce changed arrangements for the ABSTUDY scheme. ABSTUDY had been reviewed in the context of the introduction by the Government from 1 July 1998 of the Youth Allowance. ABSTUDY will be retained as a separate scheme but with some amendments to ensure that funds are appropriately targeted to achieving improved educational outcomes for Indigenous people. The changes will take effect from 1 January 2000.